

The Human Toll of the Kashmir Conflict

*Grief and Courage
in a South Asian
Borderland*



Shubh Mathur



The Human Toll of the Kashmir Conflict

*Where have you hidden my new crescent moon?
I search for my son by the light of the moon
A hawk swooped down and took him away
is he high in the mountains, near to the moon?
When he disappeared my fear went away
I approach the armed men under sun and moon
I've searched camps, hospitals and jails
where is he? can my child see the moon?*

—B. Fiona, Ghazal for Parveena and her son Javaid
(disappeared 1991)

"Love is strong as death"

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Introduction: Disappearances in Kashmir

This book is a collection of testimonies from the families of the disappeared in Kashmir. Inspired by their long quest for the truth about their missing relatives, it is based on the idea that preserving memory is central to the struggle for justice and to someday rebuilding the society shattered by two decades of armed conflict. Based on extensive fieldwork in collaboration with the families, it weaves together “insider” and “outsider” narratives to produce an understanding of life and struggle under two decades of military rule. The collaboration between insider and outsider voices enables us to see disappearances as human rights violations which fall under the legal definition of crimes against humanity, and also as a continuing story of loss and struggle in a society which is bound together by suffering and resistance. The loss of a relative—a son, a father, a husband, a brother—ripples through the web of social relationships of kin and community, and through time, creates its own webs of connectedness with strangers who share the same sorrow.

The stories of the families are told here as a series of conversations and reflections. The narratives gradually reveal the context: of a military presence and its attendant fear that has overshadowed cities, villages and forest hamlets for more than twenty years; of the control of every facet of everyday life;¹ about the ways in which news filters out about the tortures in the army camps, those who survive it and those who do not; about the thousands of unmarked mass graves; the killings and detentions,

the rapes, arson, looting and destruction that seek to cage in a civilian population. Individual encounters with the judicial system illustrate its helplessness in the face of the army presence, and the workings of national security laws that provide impunity to Indian forces. The personal narratives also illuminate the mixture of belief, uncertainty, grief and despair that drives families to confront this regime of terror. Telling these stories thus becomes a way of learning the history of Indian state violence, a history commonly hidden from view both within India and internationally.

I met Parveena Ahangar, one of the founders and President of the Association of Parents of Disappeared Persons (APDP), for the first time in March 2007. We traveled together to remote villages in the border district of Kupwara, driving north-west from Srinagar along the Lolab River valley. This was her only way of reaching other families in remote and isolated villages and hamlets, to inform them of APDP plans. There were no telephones and the mail was erratic, slow and unreliable. Late snow, thaw and spring rain produced a haunting beauty, characteristic of the Kashmir Valley—field and meadow, poplar-lined roads, streams and mountain. They also made the roads treacherous. Occasionally the way was blocked altogether, and the detours flooded so we were driving through what appeared to be a small river. For my part, I expected us to be swept away in the rushing water, but the driver's skill in finding less-used roads and in driving under hazardous conditions brought us through mountain and forest to isolated homes and hamlets. In villages and towns surrounded by army camps, checkpoints, patrols and razor wire, we heard tales of disappearances, many of them already known to APDP and some being reported for the first time since the army arrived there seventeen years earlier. It was on this trip that the idea for this book was born.

Finally, we were directed by our guide, a silent young man who had accompanied us from Srinagar in the morning, to a new case that was being brought to Parveena's notice. At Tragpora, the entire village was surrounded with barbed wire and armed soldiers, and our guide had to produce his ID and an explanation for having visitors to his house. There we met the family

of Manzoor Ahmed Wani, a young man who had been taken away to the army camp that dominated the area, a few months after his marriage. Army officials first admitted that he was held there, and that the family need not worry about him. The colonel in charge was avuncular and concerned, asking the family to bring warm clothes for him. A week later, army officials denied ever having arrested him and began threatening and targeting the family systematically. The area was already in the grip of Ikh-wani terror. The Ikhwanis are counterinsurgency death squads, trained, armed, paid, and protected by the army, to terrorize the local population. Filmmaker Sanjay Kak provides the following definition of the word and thus a glimpse into the logic of counterinsurgency: “*Brother* in Arabic. In Kashmir, Ikhwani became a word for renegade, another word for collaborator. Its origins lay in the mid-90s, in Indian security forces buying up fringe militant groups, arming and protecting them, then unleashing them upon their own people.”² People were afraid to step outside their homes, even to cultivate their fields or graze their cattle. The family of Manzoor Ahmed Wani were made particular targets: the men from the family were taken almost in rotation to the nearby army camp, to serve as unpaid labor, as human shields in case of a militant attack, and on occasion to be tortured to persuade them to withdraw the case against the army.

Yet this regime of terror and violence was unable to break their spirit or their determination to find justice. On the day of our visit, one of the brothers had just returned from the camp. I explained my reasons for visiting and the idea that the disappearances should be carefully recorded and reported to the United Nations Office of the High Commissioner for Human Rights (OHCHR) in Geneva. On learning that I was then a college professor living in the United States, their first question to me was: “Can you put our story on the BBC?” The BBC wasn’t interested, but the case of Manzoor Ahmed Wani became the first one reported by APDP to the UN Working Group on Enforced and Involuntary Disappearances, and opened the way for a collaboration between the APDP and the UN OHCHR. Since that time, APDP has become one of the best organized and most credible groups documenting human rights abuses in Kashmir.

The stories of the families recount a universal grief, of losing a child or parent, sibling or neighbor. Their loss however is not due to the mischances of this world, but an abduction deliberately carried out by an army of occupation, which then blocks all their efforts to find the missing person and to seek justice for the crime. The APDP—guided by the concerns of the families—has also pioneered the legal strategy which offers the best chance of ending these abuses and bringing the abusers to justice. Meticulous documentation of the disappearances in different districts in collaboration with the UN High Commission on Human Rights in Geneva has built a detailed and credible record of human rights abuses. It provides documentary evidence that may serve in any future tribunals to record and account for crimes against humanity in Kashmir. Such accountability is essential to any kind of peace settlement (Mendez 1997). As well as legal evidence of crimes against humanity, these narratives offer a unique look at the lived realities of two decades of armed conflict and counterinsurgency. To the slowly emerging global awareness that the road to peace in South Asia does indeed lie through Kashmir, these stories add the essential condition that peace can only be based on justice and remembering, not on silence and forgetting.

The quest of the families for justice is consistent with both the principles and developing practice of international human rights law. There is no statute of limitations in international law on war crimes and crimes against humanity. Over the past two decades, the concerns of victims of massive human rights abuses in situations of war, internal conflict, and political repression have been the driving force behind the creation of international human rights mechanisms. International criminal prosecutions for war crimes and crimes against humanity have evolved to counter the problem of the impunity provided to abusers by national governments in the name of sovereignty. The principles of universal jurisdiction have become an operational part of international law, albeit imperfectly (Falk 2014; Kaleck 2015), through the creation of the International Criminal Court (ICC), international criminal prosecutions brought in national courts, and the international criminal tribunals created by the UN. In

post-conflict societies from Guatemala to Cambodia, abusers have been brought to justice with the active help and intervention of the international human rights community—human rights advocates, the UN human rights system, researchers, and international media—collaborating with and supporting victims, survivors, local NGOs, and courts (Roht-Arriaza 2013; Sikkink 2011). Kashmir remains the unfortunate exception but also constitutes a test case for the professed concern of the international community for human rights. The present work argues for the necessity of an international criminal tribunal on Kashmir as an essential part of a credible process of conflict resolution.³

“The fate of Paradise”

It was in 1991 that Parveena’s own son was taken away. In the early years of the insurgency, the repression was at its harshest. “Crackdowns” are cordon and search operations carried out by the army, often lasting for days. Men and boys are rounded up and forced to sit outdoors, in freezing winter cold and under the blazing sun of summer. In the homes, women are left unprotected. Cash, jewelry and other valuables are looted, women molested. The infamous case of Kunan Poshpora, where more than 50 women were gang raped by soldiers from the 4th Rajputana Rifles in February 1991, occurred in such a situation. It was by no means the only such incident. Peaceful protests against the abuses—the arrests, torture, killing and disappearances—are met with gunfire from police and military.

But the reports are true, and without song: mass rapes in the villages, towns left in cinders, neighbourhoods torched. . . . The rubble of downtown Srinagar stares at me from The Times Srinagar hunches like a wild cat; Lonely sentries, far from their homes in the plains, licensed to kill . . . while the Jhelum flows under them, sometimes with a dismembered body. . . . The candles go out as travelers, unable to light the . . . Void. Srinagar was under curfew The identity pass may or may not have helped in the crackdown. Son after son—never to return from the night of torture—was taken away.⁴

These lines by Agha Shahid Ali, the Kashmiri-American poet and recording angel of the counterinsurgency, capture as no narrative can the experience of military terror. His untimely death in 2001 due to a brain tumor was part of the continuing tragedy of Kashmir. Poetry—as comprehension when all meaning fails, as expression of griefs that cannot be held in speech or thought—is an essential part of the Kashmiri experience of military occupation. As a mode of resistance, it reveals the ultimate futility of the strategies of military control. His words are woven through the following text as guide and solace in understanding the conflict.

This was the world in which Parveena's children, like other teenagers in the neighborhood of Batamaloo in downtown Srinagar, went to school, passed exams, played games of street cricket and football under the eyes of trigger-happy, murderous soldiers. Guest houses, hotels, cinemas, playgrounds, and schools had been turned into army camps and torture centers.⁵ On 8 August, 1991, as Javed, the second eldest child, was studying with a friend for his high school exams, he was taken away by the National Security Guards. Parveena traced him from the police station, where he was beaten and tortured, to the military hospital, where she was not allowed to meet him. She searched for him in hospitals, jails, morgues, courts, army camps, and torture centers, where she met others like herself, and began to organize her grief and loss into support for their struggles. With their help, she founded the APDP, Association of Parents of Disappeared Persons. As her story became known, she became a well-known figure in Srinagar and throughout Kashmir. APDP members received threats, were attacked, and even killed as they sought to find the truth through the courts, media. There are many others with stories like hers. "Disappeared," along with other words—"interrogation" for torture, "JIC" for torture centers located in army camps, "unidentified gunman" for the killers of those who speak out against human rights abuses, "Ikhwani" or "STF" for collaborators organized by Indian forces into pro-government death squads, "encounter" for extra-judicial execution—has become part of the common vocabulary in Kashmir.

Reading the pattern of abuse as it plays out over time, it becomes clear that it is not an aberration but an essential part of

a systematic and deliberate policy to terrorize a civilian population and to break down its resistance to Indian rule. The exact number of disappearances is not known, but may be numbered in the thousands. It also becomes clear that the words of the UN Declaration of Human Rights are no alien, abstract, Western imposition on the lives of the victims and survivors but quite literally words to live by: “Everyone has the right to life, liberty and security of the person,” “No one shall be subjected to arbitrary arrest, detention or exile” and “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”⁶ While the words are not remote, the institutions of human rights and international justice have hitherto ignored the suffering of the civilian population in Kashmir, and this book seeks also to remedy that situation.

Since 1989, when the movement for Kashmiri independence took the form of an armed insurgency, more than half a million Indian troops have been deployed there, making it one of the most highly militarized regions of the world. Some estimates place the number of troops deployed as high as 800,000 (Mishra 2011; also Duschinski 2009). With a ratio of one soldier to every ten civilians, Indian counterinsurgency has progressed as a classic dirty war, where the army treats the civilian population as the enemy. The troops are deployed not only on the contested borders but across the civilian areas. In this situation, human rights abuses occur on a massive scale: torture in the vast military camps and interrogation centers that sprawl across the Valley, rape, disappearances, extrajudicial killings, the use of civilians for forced labor and as human shields, destruction of crops and homes, arson, arming pro-Indian militias to terrorize the population (Agrwaal 2008; Amnesty International 1991, 1993, 2011; Chatterji 2011; Duschinski 2009; Farasat 2013; Human Rights Law Network 2009; Human Rights Watch 1999, 1996, 1993; Kak 2013; Mathur 2012; Visweswaran 2013).⁷ The power of the military is highly visible, manifested through control of space and the movement of people within it. This power is both absolute and arbitrary. By the army’s own estimates, the number of armed militants was never greater than 3,000; since around 2003, it has

dwindled to a few hundreds. The massive military deployment continues, and as the Kashmiri movement for independence from India returns to its origins as a peaceful mass movement, the abuses and repression take new forms.

To this continuing chronicle of military terror, the families of the disappeared oppose a profoundly moral voice. Grief and love give the families the courage to confront and challenge this regime. Their very vulnerability, juxtaposed to the power of the army, casts into sharp focus its immorality and illegitimacy. Parveena Ahangar has become a symbol for the sorrow, suffering and endurance of the Kashmiri people under two decades of Indian army rule. She sees herself, and is seen, first and foremost as a mother who will leave no stone unturned in her quest for justice for her son. What makes her unique are her unbounded compassion for others who suffer as she does; and her courage in challenging the power, violence and secrecy of that most paradoxical of all systems of terror—a military regime in the service of a country that bills itself as the “world’s largest democracy.” She has become not only a symbol but also a rallying point for those who seek justice for the rape, torture, murder of their beloved sisters, wives, husbands, sons, fathers. Following the wishes of the families, APDP has extended its mandate beyond disappearances to support the victims of all human rights abuses.

The scale of the abuses in Kashmir has been matched only by the profound silence in the media, by the international human rights institutions, and academic writing on the record of twenty-four years of military terror. Liberal, neocolonial, postmodern, leftist voices, widely divergent in politics and theory, have been united in excising from the historical narrative any mention of *les guerres sans nom*, the hidden wars of Indian counterinsurgency. Kamala Visweswaran problematizes not only the violence of the nation-state but also the silence of its theorists, whose critique of the nation-state nevertheless ignores its systemic violence in the borderlands: “. . . the silence among post-colonial theorists on India’s ongoing military occupation of Kashmir, Manipur and other parts of Northeast India is as deafening as the protests over Israel’s occupation of Palestine are loud” (2012, 442). She names this silence as “. . . the complicity of post-colonial theory with

security discourses in reading movements for self-determination as threats to the state or as forms of terrorism . . .” (2012, 440). The optimistic belief of anti-colonial theorists, that the relationship of colonizer to colonized would vanish with political independence, was not justified. Rather, “. . . one nation’s anti-colonialism would become another (captive) nation’s experience of colonialism” (2012, 442).

In the Indian public discourse on Kashmir, dominated by the “national security mindset” the problem is one of securing national frontiers against “outside interference.” Comparing the different regions shows that the national security and counter-insurgency policies followed by the Indian state since 1947 in the north-east, Punjab and Kashmir, have followed a remarkably coherent pattern. These policies have been shaped above all by the perception of cultural difference—religious, linguistic, ethnic—as dangerous and somehow suspect. Religious and ethnic groups falling outside “the national mainstream” have been viewed as potential or actual traitors to the post-Independence task of “nation-building.” The experience of diverse minority groups thus falls within the context of a single political order, which has responded to challenges to its legitimacy with armed force, seeking military solutions to political problems (Mahmood 2000 and 2012).

Anthropology provides a means of witnessing, in both the legal and moral senses of the word. The practice of ethnography, despite all its problems and historical baggage, remains central to understanding and communicating the lived reality of life under state terror. Inspired by anthropological writing on state terror—the work of Jeffrey Sluka (2000), Cynthia Mahmood (2000), Ricardo Falla, Beatriz Manz, Myra Mack, Linda Green, Michael Taussig (1984), among others—this work seeks to provide a documentary record of two decades of violence.

But beyond the task of witnessing, the anthropological “view from afar” allows us step backward, as it were, and to see that Indian policies in Kashmir and the northeast are essential to understanding post-Independence state and society. As Cynthia Mahmood (2001) puts it, rather than treating the multiple rebellions against Indian rule in border regions as problems to

be explained, it allows us to problematize instead the Indian state. The transformation of these areas from cultural centers and hubs of economic, social and political linkages into isolated border regions, inhabited by “suspect communities,” in the course of securing the entirely contingent boundaries of the post-colonial state, has much to tell us about the workings of the Indian state and its democratic institutions (Baruah 2007; Kaul 2010; Visweswaran 2012). It allows us to measure the claims of the Indian state to be a secular, constitutional democracy against actual practice, and through this practice, to explore the notions of identity, belonging and difference that have shaped the destiny of the nation and its wholly unwilling conscripts. The abuses of over two decades of conflict are only now being recorded, by human rights defenders, journalists, lawyers and academic researchers, primarily anthropologists, who in their turn become targets for surveillance and repression.⁸

A number of developments in recent years have brought the state of knowledge on the conflict to the brink of a much-needed paradigm shift. This involves first and foremost, placing the Kashmiri experience and Kashmiri aspirations at the center of any analysis of the conflict, rather than the competing territorial and nationalist claims of India and Pakistan. This shift allows us to understand the history of the conflict as a struggle for popular sovereignty; and brings into focus Kashmir’s historic role as a contact zone between different regions and cultures. This view is perhaps best expressed in a recent article by the Kashmiri political scientist Dr. Noor Ahmed Baba (2014), where he argues that recognition of Kashmir’s unique history is essential to a peaceful resolution of the conflict. Recent historical and anthropological writing has explored the historical dimensions of this conflict (Khan 2012; Snedden 2013; Robinson 2013) and the patterns of militarization and their consequences (Chatterji 2011; Duschinski 2009; Duschinski and Hoffman 2011). In this context, pioneering work by the late Sajid Iqbal (2014) explores the applicability of the processes of truth and reconciliation to the Kashmir conflict. There is also a developing literature on military rule and the laws of exception that enable it in the northeast. Two recent edited collections have brought the work of established

Kashmiri scholars to a wider audience (Khan ed. 2012; Mathur ed. 2014).

However, the complete story has not and cannot be told by academic voices alone. The experience of Kashmir's "conflict generation," which comes of age in a world of internet connectedness and social media, is expressed through music, art, journalism, memoir, fiction, poetry, political cartoons and performance. Mirza Waheed's (2011) first novel, *The Collaborator*, eerily prefigures the real-life discoveries of thousands of mass graves in different parts of Kashmir, as well as the experience of the ordinary villagers forced by the military to bury the slain men. Recent collections edited by Fahad Shah (2013) and Tariq Ali (2011) bring together Kashmiri points of view in a number of genres. Sanjay Kak's 2006 film, with the ironic title *Jashn-i-Azadi* ("How we celebrate freedom") offers a meditation on domination and resistance. Denied a screening certificate, and hounded by police at screenings across India, the film nevertheless manages to reach enough audiences to provoke long-overdue questioning and introspection on Indian rule in Kashmir. Taken all together, these constitute a fragmentary and complex archive, whose significance will unfold over the coming years and even decades.

A Study in Scarlet

The anthropology of violence, as it has developed over the past few decades, makes it clear that comprehension of violence lies on the other side of narrative and theory. Taussig's (1984) account of Roger Casement's Putumayo journey, which may perhaps overoptimistically be claimed as the first ethnographically based human-rights campaign, makes it clear that there are in fact two forms of understanding possible. One is the clear narrative report, with names, dates, facts, cause and effect in orderly sequence, which may even produce some ameliorative action in response to the clear accounts of violence and suffering presented therein. And then there is what Taussig has called the "hallucinatory" quality of the exercise of power, which proceeds in non-rational and non-functional ways to confront the enemy of its own creation, even its own imagination. Alongside the stated and prosaic goals of

counterinsurgency—to “maintain order,” to defend the borders, to acquire information on the insurgency—is the need, as Taussig puts it, “. . . to control massive populations through the cultural elaboration of fear.” The occupation thus becomes a mirror of the cultural values of the occupier, and the violence—inflicted on bodies, space, the psyche, institutions, the natural world—may indeed be read as a cultural map of the perpetrators. The violence of Indian counterinsurgency in Kashmir has a quality which may be described as “mythic,” literally, the stuff of legend. Perhaps only legend can fully encompass its scale and ferocity, its cruelty and inventiveness. It may be narrated and described, but can perhaps be understood only through poetry, music and art.

This project is therefore, necessarily, interdisciplinary. It draws upon law, history, international relations, media studies, poetry and film, but is grounded in anthropology both theoretically and methodologically. Since the crisis of representation, anthropology has sought to redefine its relevance and goals in multiple directions. Labels such as “engaged,” “public” and “activist” anthropology have sought to come to terms with one of the core dilemmas of ethnographic fieldwork, particularly in contexts of political conflict and war. Since the 1980s, anthropological fieldwork has increasingly brought researchers in direct contact with the consequences of political violence (Mahmood 2002). An Olympian detachment is no longer possible or even desirable. This realization however brings in its wake a new series of questions. What responsibility does knowledge bring? What obligations does the anthropologist owe to her subjects? (Gonzalez 2004; Scheper-Hughes 1995). These questions are sharpened by the explicit realization that anthropological knowledge is the product of a close collaboration with subjects in a manner wholly unlike other disciplines. This link and the conditions it engenders are the core of the field of collaborative ethnography, which frames the process of knowledge production and its purposes in terms of the question: “How can anthropology become relevant for our consultants?” (Lassiter 2005)

Lassiter invokes Spradley as an early pioneer in the field of collaborative ethnography, already addressing these issues in the course of his work: “In many places we can no longer collect

cultural information from people merely to fill the bank of scientific knowledge. Informants are asking, even demanding, 'Ethnography for what? Do you want to study our culture to build your theories of poverty? Can't you see that our children go hungry? Do you want to study folk beliefs about water-witching? What about the new nuclear power plant that contaminates our drinking water with radioactive wastes? Do you want to study kinship terms to build ever more esoteric theories? What about our elderly kinsmen who live in poverty and loneliness? Do you want to study our schools to propose new theories of learning? Our most pressing need is for schools that serve our children's needs in the language they understand.'"⁹

The pages that follow make it clear that what matters most to the families of the disappeared and other victims is to bring the perpetrators of the crimes against them to justice, to ensure that future generations will not have to live through the same experience of terror. As have anthropologists researching national security repression in Guatemala, the Philippines, Argentina, northern Ireland, Palestine, Indonesia, Spain (for example, the collection of articles in Sluka ed. 2000), I seek to write "in solidarity" with the victims of state terror. This work thus follows the multiple sites that mark the stations of the families' long road to justice, and the interplay between the twin nodes of memory and justice in shaping Kashmiri resistance to Indian rule.

Multi-sited ethnography (Falzon 2012; Tsing 2005; Marcus 1998) transforms the practice of fieldwork and the production of anthropological knowledge. "The essence of multi-sited research is to follow people, connections, associations, and relationships across space (because they are substantially continuous but spatially non-contiguous)" (Falzon 2012, 1–2). Ethnographic writing is no longer, if indeed it ever was, a matter of providing a description of a self-contained social unit, or even of such units floating in a sea of transnationalism. Such units, whether conceived as tribes, villages, or "cultures" in the classic works of anthropology, were always more fictional construct than sociological or historical reality.¹⁰ Ethnography, no longer doctrinally tied to a single location, may now entail following a particular thread, in this case, the red thread of state violence, to delineate and expose

the overall landscape—here shaped by history, politics, nationalism, militarization—which may be regional and even global in its scope. A study in scarlet, as it were, to illuminate the contours of the post-Independence Indian state and its relationship with minorities. The quest for justice has taken the families beyond Kashmir and India to the United Nations, to the international human rights community, and these connections tie together the stories in this book.

The stories told here are based on long, extensive conversations and engagement with the concerns of the families of the disappeared and other victims and survivors, human rights advocates, lawyers, journalists, teachers, writers, and artists. While the narratives are footnoted only with printed sources, largely due to the security considerations discussed below, these are based on a number of sources to ensure their reliability. Quantitative data in a conflict zone—the numbers of those killed, tortured, disappeared, and raped—are notoriously difficult to come by and highly contested. The most commonly accepted estimates have been used here.

The traditional benchmarks validating the fieldwork experience do not apply to a conflict situation. Ethnographic depth thus cannot be measured in terms of duration of stay with informants whose every action is subject to military surveillance; the presence of a stranger for any length of time draws extra attention to the house and locality. Nor can ethnographic authority be established through descriptions of the minutiae of location, movement, and action, when knowledge of these will almost surely filter through to the military apparatus and endanger informants. At the very least, both will subject them to additional interrogation sessions in one of the dreaded JICs. In such a situation, ethnographic knowledge will have to be understood in terms of a continuing engagement with informants and their concerns, and in the products—tangible and intangible—of this engagement.

It should also be mentioned here that in addition to earlier concerns about informed consent and the safety of informants, the Boston College subpoenas and their infringement of the confidentiality guarantee raise pressing questions about the integrity of the research process.¹¹ While their implications have yet to be

unraveled in academia, they constitute a new and real threat to the safety of both informants and fieldworkers.

The basis on which specific stories were chosen for inclusion here were thus guided by criteria applicable to research in a conflict zone.¹² These include, first, consent of the families concerned, unless the stories already belong in the public domain. Informed consent is seen as a process rather than an administrative necessity, and must be renewed constantly, and the continued safety of informants monitored. Another consideration was to include discussion of cases which have become legal history or in some way specially illustrate the mechanisms of military occupation and popular resistance. In many instances, there is a continuing, personal connection to the families and to their struggle, where the author has contributed assistance with legal activism on a number of fronts. Sometimes, it was impossible to resist the unspoken plea for validation, for the perpetuation of memory, the silent heroism of those collections of fading photographs and yellowing documents preserved over two decades. Some of these accounts are included as tribute to the moral courage and endurance of an unarmed people facing a powerful and ruthless military machine. The meaning of such courage is for me a matter of reflection, not yet of comprehension.

A Debt of Love

In 1978, on a family holiday in Kashmir, my siblings and I had run barefoot through the meadows, paddled in the streams, delirious with happiness as only those raised in the desert can be in the mere presence of so much green, running water, and flowers growing wild. And on the perfect holiday, the perfect place to stay was Fairview guest house in Srinagar, with its mannered lawns and rose-covered trellises. We looked back to it as a place of peace. Kashmir as paradise was for us not a cliché, but a factual description. A paradise, inhabited by kindly, cultured people. In 1991, Fairview became Papa II, one of the most notorious torture centers in Kashmir. Not a torture-and-interrogation center, here prisoners were not allowed to speak. They were only being broken before they were taken to interrogators elsewhere.

Zahid Rafiq, a young Kashmiri journalist who grew up under the occupation, one of Kashmir's "conflict generation" finally recording this history, writes about Papa II: "India's Border Security Force took it over, nailing black blankets to the windows and bringing in tools of torture: field rollers, iron hooks, strapping benches, pipes for water boarding, electric wires, and needles. 'I was there for 25 days and I never saw the sun. I only heard cries of people and my own cries coming from the torture chamber. I was never questioned there; only tortured. Those 25 days seemed like 25 lifetimes gone wrong,' says Qadeer. Qadeer was then a commander of the militant outfit Al Jihad, and after his arrest in 1995, he was taken for torture to half a dozen torture centers. He now heads the People's Rights Movement, a civil society organization of former Kashmiri militants. The group counts more than 670 torture centers in Kashmir where its members were subjected to torture. People who returned after torture—with broken bones, amputated limbs, burned flesh, pulled-out nails—also brought along stories of horror that were meant to scare others . . . Qadeer also spent time in Hari Niwas, an abandoned queen's palace, which served as the Joint Interrogation Center during the 1990s. 'They used different tactics of torture there [in Hari Niwas]. They tortured you and also asked you questions and allowed you to speak,' says Qadeer. 'Papa II made you wish that you were allowed to speak, and then after endless days of torture, you could speak in Hari Niwas.'"¹³

When I returned to Kashmir in 2006, the meadows and orchards had been turned into armed camps. Sandbags, bunkers, razor wire, military convoys, patrols and checkpoints controlled space and movement. Armed soldiers with their camouflage helmets, battle fatigues, face masks and AK47s trampled water lilies and wild roses. Landmines and unexploded shells litter the landscape, taking a regular toll of human and animal life.¹⁴ In meadows like the ones where we had picnicked, I sat and listened to Kashmiris tell in hushed voices tales of torture, toning down their stories to spare my feelings as a woman and an Indian. The trust they reposed in me, a complete stranger, was absolute, and to me, shocking. As ethnographic and human rights theory were called to face the test of reality, I had to recall basic informed

consent procedures and remind them of the risks of retaliation in speaking out. For their part, they left the choice of confidentiality to me. On every visit, to every home, I was greeted not only with courtesy but with love, notwithstanding the fact that I am Indian, and it is my country's army that has wrought this *zulm* (the Urdu word captures the range of meanings that describe tyranny, oppression, violence, terror, torture, cruelty; it is difficult to think of an English word that would suffice). I began by making it clear each time that I was Indian, but each time it was waved aside. Knowing in an intellectual way that the tropes of "Muslim intolerance" and "Why do they hate us?" are only convenient fictions used by the nation-state to justify its own violence is very different from experiencing in person the kindness, generosity and love of people whose suffering will not erode their humanity.

The South Asian notion of debt, the obligation that the individual owes to the family, the collectivity, to the past, the future, the moral and physical universe is something we used to laugh off, at the time of that long-ago holiday, with adolescent puns. More than twenty years since I began documenting state and popular violence, I see that it can take a lifetime to understand the moral meanings of debt and how it can or cannot be paid off. Fulfilling one's debt can also mean redressal for the sins of the collectivity and the ancestors. This work of documentation is perhaps some way of beginning to redress the debt the post-Independence nation owes to the peoples of the borderlands that it has trapped in decades-old prisons, symbolic and physical.

Within a roughly chronological and thematic framework, this book traces the patterns of violence and resistance over a period of nearly a quarter of a century. Chapter 2 provides a historical overview of the conflict, tracing its genesis, as Kashmiris do, to 1846 and the establishment of the Dogra state. Drawing upon new research, it foregrounds the Kashmiri experience rather than the competing national and territorial ambitions of India and Pakistan. It also seeks to follow Kashmiri efforts in recalling the violence of the early 1990s, tracking silences as well as the unexpected resilience of memory. It outlines efforts by victims and the State Human Rights Commission to initiate processes of justice and accountability, and the wall of impunity and silencing

that meets these efforts. The violence of the early years of the insurgency provides the backdrop for Parveen's story. Chapter 3 traces the events of her life as it transformed into a public life of grief and struggle. It follows personal narrative and legal analysis to uncover a system of *de jure* and *de facto* impunity. It attempts to place in perspective the meaning and heroism of Parveen's life, as seen through the eyes of those she has met in the course of her struggle for truth and justice. Chapter 4 opens with the burning of the shrine of Chrar-i-Sharief and the theme of the destruction of refuge, whether spiritual, emotional, or political. By the mid-90s, Indian counterinsurgency had gained the upper hand against the armed insurgency. It also faced international criticism for abuses against the civilian population. The solution was to create a new category of state terror, the infamous "renegades" or "Ikhwanis," surrendered militants who were forced through torture or bribery to turn on their own people (Human Rights Watch 1996, Baba 2014). Operating alongside regular army and paramilitary units, these pro-government death squads unleashed a reign of terror, specifically targeting human rights defenders—lawyers, doctors, and journalists.

Chapter 5 traces the origins and work of APDP through narration of individual cases. As APDP establishes itself as a support center for victims of human rights abuses, its mandate expands to include crimes like extrajudicial killings, rape and torture. Some of these cases are discussed in Chapters 6 and 7. Though these range over a time span of over 24 years, the pattern of atrocity-impunity-coverup plays out with remarkable consistency.

The implications of the struggle over sovereignty—defined by the families and victims as rights based on justice and love, and by the Indian state as absolute power over life and death—are examined in Chapter 8, which focuses on the death penalty and on the discovery of thousands of unmarked mass graves. Chapter 9 places the Kashmiri experience in the context of international human rights law and evolving practice. It argues that international criminal prosecutions pertaining to war crimes and crimes against humanity, such as the international criminal tribunals on Rwanda and the former Yugoslavia, are needed to ensure justice and accountability for the massive human rights violations.

Further, until the international human rights system takes up its responsibilities in regard to Kashmir, its claim to universality remains unfulfilled. Chapter 10 examines some proposed solutions for a just and peaceful resolution of the conflict; the book shows that the two—justice and peace—are inseparable. It does not attempt to frame a conclusion. It delineates instead the two distinct claims to life and death, the course of a nation turned into a prison, and the continuing cycle of terror and resistance.

This book is intended to be both testimony and memorial. APDP has attempted a number of times to create physical memorials to commemorate the missing. These have been torn down each time by the police. Memory truly functions as subversion, as consolation, and as inspiration. In the summer of 2010, the Kashmiri struggle for independence returned to its roots as a mass movement. Massive protests defying curfew orders and armed soldiers, police and paramilitaries were met with gunfire, killing scores and injuring hundreds. Memory brings together each personal loss with the new ones. Each new killing, injury, arrest, disappearance, is felt as one's own. The festival of Eid in 2010 was marked by the killing of four more teenagers by Indian forces. The only possible conclusion for the present is in Parveen's words on the present situation in Kashmir: *"Idhar sirf matam hai; yehan koi Id nahin hai, yehan sirf matam hai."* ("Here is only matam (mourning); there is no Eid (celebration) here.")

The Forgotten Massacres

In 1991, historian Alastair Lamb wrote that “. . . at the moment of writing it has become apparent that the Indian Republic is faced with, at least in that part of the Vale of Kashmir which it occupies, what can only be described as a terminal colonial situation” (1993, 22). Simmering Kashmiri resentment against political repression had burst out into an armed struggle in 1989. Contrary to the dominant Indian narrative, which has attributed this to the rise of Muslim fanaticism and Pakistani interference, writers like Baba (2014), Bose (2005), Schofield (2010) and Robinson (2013) see it as an indigenous Kashmiri response to the decades of political repression and the denial of the Kashmiri right to self-determination. Pakistani involvement was not a cause but a product of the insurgency, which offered an opportunity to inflict low-cost damages on the Indian army.

An arsenal of national security laws—besides the Terrorism and Disruptive Activities (Prevention) Act (TADA), in force from 1985 to 1995, the short-lived Prevention of Terrorism Act (POTA) of 2002, the Armed Forces Special Powers Act (AFSPA), the Disturbed Areas Act, the Public Safety Act—had been perfected in the decades of fighting insurgencies in the northeastern states and, in Punjab in the 1980s, and of keeping the minorities in their place. It was brought to Kashmir in 1990, to put down the movement for independence, which first manifested itself as a mass movement. Police, army and paramilitary forces opened fire on unarmed protesters, and urban and rural neighborhoods were besieged under curfew and crackdown, when hundreds of men and boys were rounded up and taken away—some to be released

after days or years of torture and others never to be seen again. The repression pushed the armed insurgency, until that time a small-time, homegrown affair, into a militant movement that received arms and training from across the border with Pakistan.

The early 1990s, the beginning of the insurgency, were the killing years. Daily life was a routine of crackdowns, curfew, mass arrests, disappearances. Rape and torture were, and still are, tools of a regime of military terror designed to reduce the civilian population to submission. Army and police opened fire on any protests against the repression. These were the years of the forgotten massacres—seared in Kashmiri memory but forgotten by the rest of the world. Fire, attributed by Indian forces and media to the militants or to “cross-fire,” burned Kashmiri towns and homes and reached for the Sufi shrines. More than twenty years later, eyewitness accounts describe this world, in which Parveen’s children, like the rest of their generation, came face-to-face with the realities of Indian military rule.

The Struggle for Sovereignty

The Kashmir conflict is frequently, and mistakenly, described as a territorial dispute between India and Pakistan, and as the unfinished business of the partition of the subcontinent into India and Pakistan in 1947. These views reflect external concerns and particularly the territorial claims of the two rival nation-states, which have perpetuated conflict for over six decades. From a Kashmir-centered perspective, in 1947 the politics of decolonization became enmeshed with the struggle for popular sovereignty against the autocratic Dogra regime in Kashmir (Robinson 2013). The Dogra kingdom was one of 700-odd “princely native states” of British India, nominally independent but acknowledging British suzerainty. It was a product of the policy of indirect rule. The defeat of the Sikh Confederacy by the British East India Company in 1846 brought Kashmir under British control. Unwilling to take the trouble of pacifying and administering a mountainous area remote from their power center in the east, the British sold Kashmir to Gulab Singh for the sum of rupees 75 lakhs (Lone 2009). Gulab Singh was the ruler of Jammu, a small kingdom bordering

Kashmir; he had been a feudatory of the Sikhs before changing sides to help the British defeat his former sovereigns. In political and military terms he was considered reliable enough by the British to be given the task of establishing a buffer state between British India and Central Asia (Brecher 1953; Lamb 1993).

After putting down a rebellion in his new territory, Gulab Singh's first concern was to recover his financial investment through the imposition of a high tax burden on the population of predominantly Muslim peasants and artisans. This was necessarily accompanied by the creation of a repressive political and administrative structure. Relying upon his co-religionists, Gulab Singh first recruited Dogras from Jammu, then Kashmiri Hindus or Pandits to run state institutions, excluding the Muslim majority population from positions of power and influence. The resulting confessional state had a tiny Hindu minority as the ruling elite and the majority Muslim population excluded from land-ownership, education, and employment by the government and army (Rai 2004; Snedden 2013). Repression and inequality went hand in hand. Famines in the 1860s and '70s produced no relief measures or reduction in tax assessments; soldiers were posted along passes leading to the plains to prevent people from leaving to seek better opportunities in the Punjab (Robinson 2013).

Protests against the Dogra autocracy gathered momentum in the 1920s. By 1931, the Reading Room Party became the center of the movement, demanding democracy and education for the Muslim majority. The party was harshly suppressed; leaders were detained and protesters attacked by the Maharaja's police. On 13 July 1931, the army was called in and opened fire on demonstrators, killing 17 persons (Snedden 2013). As the countdown to independence and partition began, the princely states became the focus of political and religious maneuvering to persuade the rulers to accede to one or the other of the two successor states. This also brought the influence of the growing communal divide in the subcontinent between Hindus and Muslims to the state. Both Hindu and Muslim nationalist parties had very limited success in Kashmir, but in Jammu the Hindu Mahasabha found fertile ground with tacit support from the Maharaja. In Kashmir, the movement for democracy, now gathered under the leadership

of Sheikh Abdullah and the National Conference (NC), was swayed despite its Muslim majority by the popular credentials of the Indian National Congress and by the Sheikh's friendship with Nehru. In 1944, the party adopted the Naya Kashmir (New Kashmir) Manifesto, which "blended socialist land reform with sovereign rule by the people of the state" (Robinson 2013, 40).

The NC's Quit Kashmir Declaration of 1946 repudiated the Treaty of Amritsar in favor of self-rule by the people of the state. The Maharaja, with some idea of remaining independent for as long as possible, signed a standstill agreement with Pakistan in August 1947 and sought the same with India but received a vague response (Lamb 1993). Events moved swiftly, and by August 1947, the Maharaja was facing an armed revolt in Poonch in western Jammu due to the high taxes imposed after its annexation in 1936.¹ In September 1947, the tide of religious violence that accompanied the creation of the two new nations reached Jammu. It is estimated that two-thirds of the Muslim population of the province was either killed or forced to flee through pogroms organized by the Hindu nationalist Rashtriya Swayamsevak Sangh (RSS) in conjunction with the Maharaja's forces (Bhasin 2013; Lamb 1993; Snedden 2013). There was no retaliatory violence against the Hindus in Kashmir, unlike the retributive genocides that engulfed Punjab and northern India at the time.

At Partition, the native princely states were presented with the choice of joining either India or Pakistan. While the British left the decision to the ruler, the stated position of the Indian leadership was that the wishes of the majority of the population should prevail. The people of Kashmir were never allowed to exercise this choice. By August 1947, most of Poonch district was free of Dogra control and renamed Azad Kashmir. In October, tribal raiders from the northwestern province of Pakistan entered Kashmir through the northwest and headed for Srinagar, the summer capital of the state. Facing popular revolt and the tribal incursion, the Maharaja fled Srinagar for Jammu. According to the official Indian version, he signed the Instrument of Accession on 26 October, clearing the way for Indian troops to be airlifted to Srinagar the next day to halt the advance of the tribal raiders. This led to the first war between India and Pakistan, which was

halted only when the UN Security Council negotiated a ceasefire in 1948. “The cease-fire line divided Kashmir between Indian-controlled and Pakistan-controlled sections; the former comprising the regions of Jammu, Ladakh and the Kashmir Valley, while Pakistan controlled Azad Kashmir and the Northern Areas of Gilgit and Baltistan. It re-oriented historical regional routes



Image 2.1 Map of Kashmir.

Source: UN Cartographic Section, "Jammu and Kashmir Area," Map No. 3953 Rev.4, December 2011. Accessed March 2015, <http://www.un.org/Depts/Cartographic/map/profile/kashmir.pdf>.

of trade and travel such as the Jhelum River Road, which had connected Muzaffarabad city to Srinagar, to the silk route and the Central Asian cities of Kabul and Kashgar, to Leh and the Tibetan Plateau, and to the Punjabi cities of Lahore and Amritsar.” (Robinson 2013, 46)

The Indian-held areas comprise three distinct regions, with differing and divergent demographics, culture and political aspirations. Jammu, in the southwest has a slight Hindu majority and a large (nearly 50 percent) Muslim minority. The population of Ladakh to the northeast is nearly evenly divided between Buddhists and Muslims, with the latter in a slight majority. The Kashmir Valley, which is the demographic, cultural and economic heart of the region, has a Muslim majority (95 percent) and small Hindu and Sikh minorities.²

The Indian claim to all of the territories ruled by the Dogras, which official Indian parlance designates as “the state of Jammu and Kashmir,” is based on the Instrument of Accession. The authenticity of the instrument has been questioned by historians on the grounds that it could not have been signed on 26 October. The date is significant, as the instrument provided the justification for the Indian military intervention (Anderson 2012; Lamb 1993). An often overlooked fact is that there were already Indian troops on the ground in Jammu and Kashmir well before the controversial date of the signing of the Instrument of Accession. The state of Patiala had acceded to India in August 1947 and by September, the former Maharaja of Patiala’s troops, now *de jure* Indian forces, were helping Hari Singh put down the armed rebellion in Poonch (Bose 2005; Schofield 2010).

Further, Accession was provisional, pending the results of a plebiscite to decide the future of the state, as mandated by UN Security Council resolutions. Sheikh Abdullah summarized the letter and spirit of these commitments in his letter to the UN Security Council: “On 13th Aug. 1948 and later on 5th Jan. 1949 the U.N. Commission on India and Pakistan passed two historic resolutions incorporating the solemn agreements of the two countries that accession shall be decided through a free and impartial plebiscite under the aegis of U.N. organisation. These international commitments to the people of Kashmir are categorical and unambiguous.”³

In 1948 Sheikh Abdullah was installed as the first Prime Minister of Kashmir and immediately pushed through a series of far-sighted and far-reaching reforms dismantling the legacy of Dogra autocracy. Land reforms that gave land to the tiller, debt relief, universal access to free primary education, and the abolition of the hated practice of *begar* (forced labor) led to profound and lasting changes in agrarian social structure, nearly unique in the history of South Asia.⁴ His leadership was short-lived.

As mentioned above, the Instrument of Accession was both provisional and limited, ceding to India control only over defense, foreign affairs, and communications. The Constitution of India, adopted in 1950, guaranteed the autonomy of Kashmir. Indian Prime Minister Nehru had publicly committed India to holding a plebiscite. Nevertheless the Indian government backed away from this commitment and initiated the creation of a constituent assembly to achieve the full integration of Kashmir into the Indian Union. Sheikh Abdullah's opposition to these plans led to the overthrow of his government in the coup d'état of 9 August 1953. He was replaced by the pliable Bakshi Ghulam Muhammed. Sheikh Abdullah was arrested, along with thousands of his followers.⁵ In March 1956 Nehru publicly repudiated the Indian commitment to a plebiscite.

Over the next three decades, Indian strategies of control relied on the somewhat shaky loyalty of a minuscule political class bought through fixed elections and corruption, and overall economic integration of the state through control of its natural resources and economy. This did not translate into political control and the movement for independence from Indian rule was taken up by the Plebiscite Front in the 1950s and then by the Jammu and Kashmir Liberation Front (JKLF) founded in 1974. While Pakistan's efforts in relation to Kashmir focused on internationalizing the issue and seeking a UN-mediated settlement, the Indian position has solidified into the claim that Kashmir is an "integral and inalienable part" of India. This claim is contradicted by the inclusion of the Kashmir conflict on the agenda of the sporadic peace talks between India and Pakistan. The UN recognizes Kashmir as a disputed territory and maintains military observers along the Line of Control.⁶

The immediate trigger for the insurgency was the blatantly rigged election of 1987, in which the pro-India candidate in Srinagar was declared the winner though the opposition candidate, representing a coalition of profreedom parties, was leading by a landslide margin as the vote count neared its end. When the outcome was challenged, the candidate and his campaign manager were both jailed and tortured. On their release, they formed the two groups at the forefront of the armed struggle against Indian rule. Massive protests against electoral fraud and the arrest and torture of demonstrators were met with gunfire from police and military. The Indian military response was well rehearsed and ruthless. Nagaland, Assam, Tripura, Meghalaya, Mizoram, Manipur had successively been placed under military rule over the decades since 1947, and now it was Kashmir's turn.

The Bridge of No Return

The Indian response to the insurgency—which was initially a small-scale, local affair carrying out targeted assassinations of unpopular government, police and intelligence officials—was to dismiss the elected government, put the state under emergency rule and initiate a massive military crackdown. Indian counter-insurgency strategy had been honed through the decades in the northeast and Punjab. The tripartite package—massive military deployment, blanket political repression and special national security laws—was brought to Kashmir in 1990. Sumantra Bose wrote: “The Indian state’s response to the uprising was instead to institute a policy of ruthless mailed-fist repression, a policy supported by virtually the entire spectrum of Indian political opinion . . . state-sponsored violations of civil liberties and fundamental democratic rights of citizens had been normal, indeed institutionalized practice in Indian Jammu and Kashmir for four decades prior to 1990. But what unfolded in IJK from 1990 on was of a different order and magnitude—a massive human rights crisis. From the perspective of Indian counterinsurgency strategy, a surgical response was not feasible given the manifestly popular nature of the uprising. Indeed, an Indian journalist reported in

April 1990 that the azaadi movement had united workers, engineers, schoolteachers, shopkeepers, doctors, lawyers, even former MLAs [members of the IJK legislative assembly] and Jammu and Kashmir police. The nonsurgical response rapidly turned the relationship between the Indian state and the Valley's population into an occupier-occupied relationship. . ." (2005, 111-112).

More than twenty years later, Kashmiris are beginning to document their long-silenced memories of the violence of Indian counterinsurgency, making these the foundation of the quest for justice. As the new social media opens up more numerous and independent channels of communication, the new year becomes a succession of bloody anniversaries, commemorating forgotten massacres: soldiers opening fire on unarmed demonstrators, fires set deliberately to burn entire towns, mass rapes. Scattered across blogs and news sites, personal memories of mass killings are shared for the first time, not only with the world at large but even within families. Every home and every family in Kashmir has memories that merge with the collective experience. The calendar itself becomes a tool of memory, a roster of death that stretches across the decades.

The annual commemoration of forgotten massacres might begin on 6 January, with the destruction of Sopore. On that day in 1993, the paramilitary Border Security Force (BSF) set fire to the town and massacred any civilians they came across. Early in the morning, a BSF picket was attacked by militants, who killed one soldier. An hour later, BSF personnel belonging to the 94th Battalion poured out of their camps in the area and opened fire on anyone moving on the streets. When people took refuge in the shops lining the main thoroughfare, the BSF soldiers set the shops on fire. Survivors' accounts recall that the BSF first sprinkled gunpowder along the shopfronts, then started the fire that consumed one hundred houses, three hundred shops, a college and a movie theatre. They shot anyone trying to escape the resulting inferno. A few were able to save their lives by offering money to the BSF troopers about to shoot them.⁷ The fire brigades which arrived to help were held back for two hours, during which time the fires raged unchecked. Rescuers attempting to recover bodies and property from the burning shops were shot.

A state transport bus, with the passengers still trapped inside, was set on fire, as was a car on the street. All passengers in both vehicles were burned to death. Recovery efforts lasted for days; the charred bodies were nearly impossible to identify. A team of doctors helping the survivors was obstructed and harassed by the army. The exact number of those killed and injured is not known: estimates vary from 53 to 75 people killed, including women and children, and 300 injured. The official response was to blame the arson and killings on “cross fire” between the BSF and militants. A judicial inquiry ordered by the High Court ended inconclusively, as did the Central Bureau of Investigation (CBI) inquiry that succeeded it.⁸

One testimony recalling the attack evokes images that remain clear and immediate more than two decades later: “An unfortunate bus, half-full with passengers, on its way to Sopore got caught up in the frenzy. The driver oblivious to the savagery of the 94th Battalion BSF was flagged down. Soon charcoal gray powder blew into the vehicle. Terrified passengers froze in their seats, their hands still inside their Pherans. A stash of gunfire lit the bus up. The ill-starred men and women banged at the window-panes, begging to be let out, but their screams met no saviors. The nearby shops were burning in maroon fire with real people in them. A hundred thousand books in the local women’s college were turning to dark dust in the library. The foot soldiers of the world’s largest democracy looked on with a ghoulish glee. Entire families were wiped out. A respected Sufi Pir (spiritual man) lost six members of his immediate and extended family. His two grandsons, two nephews, and two cousins. The old man was unwell in his bed when news of the doom came. Women began to pull their hair out and grown-up men wept inconsolably in his mud-and-brick three story home, often frequented by devotees. Later when the corpses of all the six young men were lined up in the lawn, someone asked the Sufi if he wanted to come out and have a last look at the lads. ‘Oh yes,’ the old man said and as someone walked him outside he whispered in the most feeble voice, ‘I had a dream last night and they told me that we shall take you to hear things I never imagined. I think this is the Taebeer (interpretation).’”⁹

*"Rizwan, it's you, Rizwan, it's you," I cry out
 as he steps closer, the sleeves of his phiren torn
 "Each night put Kashmir in your dreams," he says,
 then touches me, his hands crusted with snow,
 whispers, "I have been cold for a long, long time"
 "Don't tell my father I have died," he says,
 and I follow him through blood on the road
 and hundreds of pairs of shoes the mourners
 left behind, as they ran from the funeral
 victims of the firing. From windows we hear
 grieving mothers, and snow begins to fall
 on us, like ash. Black on edges of flames,
 it cannot extinguish the neighbourhoods,
 the homes set ablaze by midnight soldiers.
 Kashmir is burning.¹⁰*

The second anniversary of the year might be the Gawkadal Massacre of January 21. On that day in 1990, the paramilitary Central Reserve Police Force (CRPF) opened fire on unarmed protesters as they crossed the Gawkadal bridge. Some twenty thousand people gathered in the streets of Srinagar to protest against the military crackdown that began on 19 January. The elected Government had been dismissed and a state of emergency declared by New Delhi. Jagmohan, a Delhi bureaucrat famed for his "toughness" and anti-Muslim sentiments (Schofield 1997:241; Tarlo 2003) was seen as possessing the right mindset to deal with the rebellion. In an interview to *Current* in May 1990, Jagmohan stated, "Every Muslim in Kashmir is a militant to-day. All of them are for secession from India. I am scuttling Srinagar Doordarshan's programmes because everyone there is a militant. . . . The bullet is the only solution for Kashmir. Unless the militants are fully wiped out, normalcy can't return to the Valley."¹¹

Jagmohan put his belief in the bullet into action at the first opportunity. "He took the charge on January 19 and on the same night the troopers searched homes in the Guru Bazaar area during crackdown operations, and randomly arrested 56 civilians, beat up and abused people. On January 20, the families including a large number of women, took to streets demanding the release of their kin who had been pulled out of their beds. They laid

siege on the divisional commissioner's office for the whole day. Eventually, by the evening 50 of those arrested were set free as nothing was found against them. Next day, a huge procession was taken out from Mehjoor Nagar and thousands of people from civil lines areas joined it. The protesters were marching toward Chota Bazar where the troopers had molested some women a day before. But when it reached Gawkadal the CRPF troopers fired at the unarmed peaceful protesters killing 52 of them and injuring scores of others."¹²

Sumantra Bose quotes Farooq Wani, an engineer who was present at the protest and was badly wounded: "I fell down on the road (after being hit by gunfire). I saw small boys being shot. I remained lying. Then I saw a paramilitary officer coming. I saw him pumping bullets into the bodies of injured people lying on the road. A young boy trying to hide under the bridge (over the Jhelum River) was killed. . . . As I lifted my head, a CRPF man shouted: 'He's still alive!' I pleaded: 'I'm a government employee, please don't shoot.' The officer shouted abuses at me and said *Islam mangta hai?* (you want Islam?), and fired at me. My back and hands were hit. Another paramilitary moved up to me and shouted—*tum sala zinda hai, mara nahin hai?* (you bastard, you haven't died yet?) He left after kicking my back. . . . Then a truck was brought, and all of us, dead and injured, were piled into it—they about 30–35 dead bodies. As there was no space for more, the officer ordered the driver: *Baaki ko naale mein phenke do* (throw the rest into the stream). A tarpaulin was thrown over us. After driving for some time we stopped, and I heard voices speaking Kashmiri. One of the injured among us cried out. The tarpaulin was lifted and we saw a local policeman, who said: 'My God, there are living bodies here.' Three other people were still alive." (Bose 2005, 109–110).

The Gawkadal massacre was not an isolated incident but rather the template for Indian control. March 1 is the anniversary of the Tengeora and Zakoora massacres; on that day in 1991, Indian forces opened fire on protesters trying to deliver a memorandum against the military crackdown to the office of the UN military observers. Forty-seven people were killed. Another anniversary would be May 21, when 70 people were killed by army firing on

the funeral procession of the Mirvaiz Molvi Mohammed Farooq, who had been assassinated by militants for his criticism of the killing of innocent civilians. Among the dead were five pregnant women. The pallbearers and the shrouded corpse were also hit by bullets. October 23 is the anniversary of the Bijbehara massacre of 1993¹³, when demonstrators protesting the siege of Hazratbal mosque in Srinagar by the army were trapped by soldiers from the BSF blocking both ends of the street. The soldiers then opened fire on the unarmed demonstrators, leaving 45 dead and about 150 wounded.

An incomplete listing of the massacres, forgotten by the rest of the world but part of personal and social memory in Kashmir, would begin thus: in 1990, Kupwara, Gawkadal and Basantbagh in Srinagar, Alamgarhi Bazar, Tengpura and Zakoora, Islamia College, Srinagar, Mashalpura, Pazipora (Kupwara), Handwara, Rainawari (Srinagar), and Chrar-i-Sharief; in 1991, Magarmalbagh (Srinagar), Achabal Islamabad, Sopore, Zakoora Nagbal (Srinagar), Pishwari Trehgam (in Kupwara), Khayam, Khhan-yar and Pir Dastageer neighborhoods in Srinagar, Chotanbazar Srinagar, and Safanagri and Nelora (in Pulwama district); in 1992, Aloosa village in Badipora tehsil, Baramulla district, Mohalla Hajama, Talian, Syed Sultanpora, Mahrajpora, and Chinkipora, Lal Chowk, Srinagar, Ishbar locality in the outskirts of Srinagar, Nasrullahpora, adjacent to Budgam, Taj Mohalla of Tral, in Pulwama district, Handwara town of Kupwara, Kishtwar area of Doda district; in 1993, Sopore in Baramulla district, Bijbehara, Sopore, the burning of downtown Srinagar in 1993 and Chrar-I-Sharief in 1996; the Salian Surankote massacres in 1998.¹⁴

Under international law, there is no statute of limitations on war crimes and crimes against humanity. Given the glacial pace of political shifts, it can take decades before victims and survivors are able to force the perpetrators of such crimes to account for their actions in courts of law. The State Human Rights Commission (SHRC) in Kashmir has begun the long and difficult task of documenting these crimes and prodding the state government to act on its findings and recommendations. Created in 1997 as a response to international unease about India's human rights

record in Kashmir, the SHRC was for a long time hampered by the lack of personnel and resources. Despite its limitations, the SHRC has opened investigations into the forgotten massacres and other crimes.¹⁵ In December 2012, the SHRC opened an investigation into the Gawkadal massacre.¹⁶ The case had been closed as “untraced” by the police in the mid-1990s, and no one was ever held accountable. In response to a petition filed by a Kashmiri NGO, the SHRC reopened the investigation: “. . . after officials from the state government failed to respond to the Commission’s notice for successive eight hearings to submit their report over the incident.”¹⁷

Some of the other investigations opened by the SHRC include the Tengoor and Zakoora massacres; the Hawal massacre of May 21, 1990, when 70 people were killed by army firing on the funeral procession of the Mirvaiz Molvi Mohammed Farooq, one of the foremost religious figures in the valley. Among the dead were five pregnant women.¹⁸ The SHRC has also reopened the police investigation of the 1994 Kupwara massacre, when troops opened fire on passengers at a bus stand killing 27 and injuring 36.¹⁹ According to media reports based on a letter sent by the Indian Home Ministry to the Defence Ministry, the police inquiry into the Kupwara massacre is being blocked by the army: “In spite of repeated efforts, including a notice from Court of Judicial Magistrate Kupwara, the concerned Army unit (ASC 31 Medical Regiment) has not cooperated with the investigating agency. . . . Non-cooperation by Army has jeopardized further investigations of the case.”²⁰

The Survival of Memory/Memory as Survival

For outsiders whose frames of understanding are constituted by historical narrative and political analysis, it becomes difficult to imagine how these events have become part of the lived experience of Kashmiris. Children grew up witnessing crackdowns, humiliation, torture, arrests, massacre and funerals in their streets and everyday spaces. Militarization, as noted above, is not confined to the borders or even to the public places. Very little has been said or written about the psychic costs of the occupation,

beyond scattered remarks on psychiatric disorders conceived within a limiting framework of Western medicine or even its critique (e.g. Saiba Varma). Journalist Farah Bashir, in a presentation at a conference at the University of Warwick,²¹ addresses the significance of "... how militarization enters ... the sanctuary ... home which is supposed to be a refuge ... so it no longer remains that safe place ... and it doesn't stop there. We inhabit homes, so it enters our minds. ...". The violence of occupation attacks personhood; but beyond selfhood, and in ways inaccessible to Western liberal discourses centered on the autonomous individual, it attacks, tortures and destroys beloved others, things, and ideals. In its struggle to maintain control, it seeks to do away with both refuge and meaning, and to transform them into spaces of submission and domination (for example, Swiss and Giller 1993).

Memory inexplicably thrives in silence. There are many facets to the silence, which persists within the family and even the individual's own consciousness, until the floodgates break. A young journalist, Omar Bashir, brought up in a privileged background which sought to shield him from politics and the violence of the counterinsurgency, recounts the day when military terror visited his own home and family: "One chilly night, mother was not at home nor was my younger brother. An overnight encounter at a house, two streets away, forced Farooq sahib, father's close friend, to stay at our home. In the middle of the night, a loud knock at the door woke us up. Papa went outside, eyes half closed, and I followed. As he opened the door, ten men dressed in traditional olive green of the security forces pounced on him, slapping him till he fell to the ground. This was followed by kicks and hits by the butts of their guns.

"Only a couple of steps behind my father, I stood, shocked, unable to move.

"Farooq sahib rushed out of the house only to be met by the same fate. Blood was oozing out of his nose as he was dragged back inside the house. I tried to follow but one of them caught hold of me; I didn't resist.

"Then there was silence.

"I thought I had gone deaf, until I heard the cries of pain come from inside the house. I felt hopeless, helpless and terribly

alone. It continued for hours. Then they left, and our lawn was filled with neighbours. Papa put on a brave face as he was being removed from the house, carried by three men. He pointed his finger towards me and signalled something to the next door neighbour, a woman who was holding my hand. She hugged me, moving my face towards her and away from the scene.

“My father was moved to a nearby hospital for a few days and only very recently did he reveal the happenings of that night; how he had been tortured and beaten mercilessly. He was unclothed, water was poured all over his body and he was electrocuted; all this torture because a militant had allegedly passed through our compound and crossed over to the other side of the colony; an incident over which we had no control.”²²

Violence becomes inextricably linked with space. Meadows, villages, playgrounds all recall stories of torture and death. “Today there is hardly a village or community where paramilitary soldiers have not been stationed at some time over the past two decades. And where there are troops, there need to be barracks. In the early years of the conflict, the army and paramilitary set up barracks in schools, government offices, heritage buildings, the abandoned houses of Kashmiri Pandits, cinema halls, orchards—anywhere they found a convenient bivouac. . . . These camps have now become so intertwined with Kashmir’s residential areas that few really notice them anymore; or rather, they try not to, with varying degrees of success. Besides housing the armed forces, these taken-over premises gained notoriety for their use as torture cells and veritable concentration camps. Those who survived recall these facilities with a mixture of awe and horror; for the relatives of those who were tortured to death within, they are remembered as death chambers. Although in recent years many of these places have been vacated by the security forces, their infamy continues to haunt the local communities. Such places are scattered throughout the Kashmir Valley; although there is no public record of their locations, a stark map of them remains in the collective Kashmiri mind.”²³

Everyday spaces become landmarks of the violence. The outsider learns to see the city as a space of memories, indelibly

imprinted by trauma. I discovered this driving through Srinagar with a young man who worked with an Indian NGO, when he pointed out his old school and playground. This school, too, had been turned into a detention and torture center. “How do you know? Did you see it?” I asked, striving for composure in the face of a suddenly opened wound. “Yes I saw it. My uncle was held there for months.” The kind of question that is so hard to ask: “Did you ever go there?”

“Yes, I visited once with my mom. It was her brother. We could see that he had been tortured. He was a doctor. We just sat there for a while. Then he said, ‘Just go.’ We never went again, he didn’t want us to see him in that state.”

The violence is written on bodies as well as memory. A veteran Kashmir journalist writes “. . . of a man who lives in Kupwara, close to many sites of unmarked and mass graves. Some years ago the army detained him, and allegedly tortured him so badly inside a camp that he lost one of his legs completely and drags another with the use of crutches. His hands, he alleges were burnt on a blue stove and he finally had to have a few fingers amputated. He was later selected by the army for a tour to Taj Mahal, under its hearts and minds campaign, ‘Operation Sadbhavna,’ or ‘Goodwill.’”²⁴

The music of the Kashmiri hip-hop artist MC Kash (whose real name is Roushan Ilahi) gives voice to memory, commemorating the Gawkadal massacre in his song “The Bridge of No Return”.²⁵

This is what I know

This is how I know . . .

21st January 1990

The bridge of no return is a part of me

21st January 1990

The bridge of no return is my memory . . .

This is what I’ve seen

This is who I am . . .

An early review of the manuscript noted that the song refers to events that happened before Roushan was even born. This is in fact how memory works, in fragments, glimpses and silence. The twin of memory is resistance. An anonymous Facebook post

articulates this: "Right from child hood . . . i seen so many dead and lots of extortion, loot, 3rd degree torture, even worse one cant imagine..... now i am saying enough is enough . . ." Experience validates memory, which cannot be wiped out by "history." What has never been written down cannot be erased.

Parveena's Story

"I was an ordinary housewife. I had never imagined in my worst dreams that one day tragedy will strike me this hard. I had never been to Lal Chowk alone, and today I travel to different parts of India all alone. The tragedy that befell me has given birth to a strange courage in me. But, yes, I remember once a person told me that I would have to travel a lot, see things I had never imagined of. Though he never said in good way or bad way, his words turned out to be true."

—Parveena Ahangar

In September 2011, Parveena Ahangar traveled to Dublin, Ireland, to a gathering of human rights defenders from around the world. She traveled alone; the Indian state limits passports issued to Kashmiris. Even the few issued are valid for only one year, while regular Indian passports are valid for five or ten years. In April 2011, she had been chosen as one of the six finalists for the Frontline Defenders award, which intends to “. . . honour the work of a human rights defender who, through non-violent work, is courageously making an outstanding contribution to the promotion and protection of the human rights of others, often at great personal risk to themselves.” In Dublin a small and committed group, Indian, Pakistani and Irish, formed to support her through the three days spent in a country where she did not speak the language and did not know anyone. They came to regard those days spent with her as a rare privilege. Parveena's gift of inspiring and communicating with people works across all barriers of language, religion, nationality and experience. Her

words are simple, and the story she tells is one of universal grief, the mother mourning for her lost son. Her words also prefigure expert legal opinion on the state of lawlessness and impunity under which the Indian army operates in Kashmir.

Her summing up of the situation goes to the heart of the matter: "There are laws for you and for me but there is no law for the army . . . there is no justice." The course that she has charted with the families, to provide support the victims' families and to bring to justice the perpetrators of the crimes against them, merges remarkably well with the concerns and evolving practice of international human rights law. Despite nearly impossible odds—the continued military repression, surveillance and threats; local rivalries; lack of funds and resources; the situation of poverty and despair to which victims' families are reduced by their misfortunes; her own sheltered upbringing and limited education—she has built APDP into a symbol of resistance to state terror and a rallying point in the quest for justice. It has been a long and difficult road, full of threats, delays and blocks which she knows are all intended to achieve one purpose—to allow the army a free hand in Kashmir, without any accountability. She says: "*Maine bahut kuchh seekha hai uske jaane ke bad. . . . maine har jail me dekha hai . . . maine kya kya nahin seekha.*" ("I have learnt so much after I lost him . . . I searched in every prison . . . what have I not learnt in searching for him. . . .")

My own knowledge of the connection between Hindu nationalist violence targeting religious minorities within India—Sikh, Muslim and Christian—and the violence of state forces terrorizing civilian populations in Punjab, Kashmir, and the northeastern states dates back to an inexact memory of a news clip from an Indian video magazine during the early years of the conflict, perhaps 1991–92. This memory is framed by the knowledge of terrible things happening to the civilian population in Kashmir and of being completely helpless to prevent it or to intervene. At that time, my research among the victims of Hindu nationalist violence was revealing the manner in which a combination of popular suspicion and "antiterrorism" laws enabled sweeping arrests of men and boys belonging to religious minorities (Mathur 2008). Beginning in the late 1980s, the transformation of Hindu

nationalism from the fringe of politics and discourse to the center of power was marked by spiraling violence against religious minorities, first Sikh, then Muslim and Christian. In the series of anti-Muslim pogroms which took off from 1987/89, the victims were nearly all Muslims, but it was young Muslim men and boys that the police and intelligence agencies targeted in sweeping arrests. The making of truth, justice, narrative, guilt and punishment were all functions of the identity of those involved.

Those arrested were held under national security laws like the Terrorism and Disruptive Activities (Prevention) Act of 1985—the infamous TADA, under which some 80,000 were arrested over the period 1985-95. Nearly all of them belonged to minority—Muslim and Sikh—or *Dalit* and tribal communities. TADA allowed for detention without charges for up to one year; the detainees were tortured in custody, and families and communities broke down under the weight of financial hardship and suffering. As with “antiterror” laws elsewhere, the rate of conviction was less than 2 percent of those arrested. The persistence of this pattern of discrimination and persecution over the years is documented in a recent book by Manisha Sethi (2014).

In that news segment from the early years of the insurgency, the camera focused on a group of Kashmiris waiting outside a makeshift army camp for their relatives who had been arrested by the army. The Indian reporter focused on a young boy, perhaps 8–10 years old, whose father had been arrested. The reporter insistently repeated the questions: “Do you think the army will release your father?” and “Do you think your father will come home?” The boy’s answer, repeated just as insistently: “Of course he will return home. He hasn’t done anything, you see. Of course, the army will release him. Of course he will come home.” The memory of that exchange has stayed with me for over two decades, the length of time for which Parveena Ahangar has been searching for the truth about her missing son.

“Things I Had Never Imagined . . .”

First Yasir, Javed’s younger brother, was taken to the camps. Hundreds of boys from the working class neighborhood of Batamaloo

in downtown Srinagar had been rounded up and were being held and tortured in the army camps and interrogation centers. Many such centers had been set up in schools. Yasir was just 15 years old at the time; the other prisoners begged for him to be released. He could not bear to witness the tortures carried out on others and was seriously disturbed. While he was still in the camp, Javed, a year older than him, was taken away. He was studying at a friend's house for his high school exams, when they were picked up by National Security Guards.

Parveena traced Javed from the police station, where he was beaten and tortured, to the military hospital, where she was not allowed to see him, even though she had been issued a pass by a senior police officer. At the hospital she saw other prisoners, including a young boy the same age as her son who had been tortured, and was missing fingers from his hand. She realized that this might also have been her Javed's fate. For a while, she almost lost her mental balance, and her family life began to unravel. She would walk around the streets and accost strangers, demanding to know her son's whereabouts. The urgent questions still echo today: "Where is he? What have they done with him? Where have they taken him?" She searched for him in hospitals, jails, morgues, courts, army camps, and torture centers, where she met others like herself, and slowly began to organize her grief and loss into support for their struggles.

But life had changed for Parveena and all her family. All resources—financial, emotional, family connections—and planning were devoted to the search. While the media stories have focused on Parveena's loss as a mother, the shock of losing Javed was felt by all his siblings as well. Saima, now an elegant and highly accomplished young woman in her twenties, was only five years old when her brother was taken away. She recalls coming home to hear her mother sobbing in the empty house. Rather than going home, she would run to the neighbors and beg them to stop her mother's weeping. Saima now devotes herself full-time to APDP work, in an exhausting round of travel to meet families in the city as well as in remote locations around Kashmir, fundraising, matching up APDP's limited funding for direct assistance with the most pressing needs of the families. Saima's

brother Yasir recalls hearing the news of his brother's disappearance. He was sixteen at the time. He had just been released from one of the camps after months of torture, and fell down in a dead faint when he heard the news. The family no longer celebrates any festivals. As Parveena said in an interview: "Yesterday was Eid. I didn't eat a thing . . . I have three more sons, but how can I forget Javed?"

As her story circulated, Parveena became a well-known figure in Srinagar and throughout Kashmir. APDP members received threats and were attacked as they sought to find the truth through the courts and media. Two leading members were killed. Parveena and the other family members began sit-ins on roads, in front of the courts, at Sufi shrines (*ziarat*, places of pilgrimage), outside Parveena's house as a means of protest, to demand the truth about the missing ones and justice for the crimes committed against them. If they are dead, they said, give us their bodies so we may bury them. If they are buried, tell us where the graves are. Bring the perpetrators to justice. There was no one to hear them. They began meeting at Parveena's house in Batamaloo as a group—that was the beginning of APDP. After two or three years, they began a program of public demonstrations at the Sher-i-Kashmir Park in central Srinagar. Parveena also sought out others, traveling to far-off places despite military patrols, cordons and checkpoints. She speaks to me in somewhat ungrammatical Urdu, our only common language, with a distinctive Kashmiri accent: "*Main pahad gaya, main jungle gaya, main gaon gaya. Main ne dhoondha aur kis kis ko mera jaisa dukh hai.*" ("I went to the mountains, to the forests, to the villages, to seek out others who had a sorrow like mine.")

Her life after Javed's disappearance is a public one, a life of grief: of meeting with and consoling families, of sit-ins in the heart of the city, of travels to far-off places to tell the story of her search. All these are carefully documented, photographs, papers, news clippings, court documents. If objects could speak, these do, each one recalling the trauma of that particular day, that stage of the journey. The carefully preserved papers trace the stages of the long struggle—the hospital pass for entrance to the military hospital; the petitions, the campaigns carried out by

Amnesty International groups in Japan, Belgium, and the United Kingdom to trace the fate of Javed Ahmed Ahangar; the journeys made by Parveena to meet the families of the disappeared from Thailand, Sri Lanka, the Philippines, Latin America, Africa; to Delhi to meet the few Indian groups interested in the Kashmiris' situation; the beginnings of the APDP protests, first at Sher-e-Kashmir Park, then at Pratap Park in the heart of the city; the press reports in Kashmiri and international media; her nomination for the 2005 Nobel Peace Prize as one of the 1000 Peace Women. In 2008, Parveena traveled to Geneva to meet the UN Working Group on Enforced and Involuntary Disappearances. With support from the UN Voluntary Fund for Torture Victims, APDP plans to build a memorial for the disappeared, and to create a human rights documentation and resource center. In April 2011, the Dublin-based human rights group Frontline Defenders chose Parveena as one of the six finalists for the Front Line Award for Human Rights Defenders at Risk. To the victims of today, as to the families of the disappeared, Parveena is both consolation and inspiration: "*Main himmat nahin hara. Main nahin darta. tum bhi mat daro. Kya kar lenge mujh ko? Yeh kuch nahin kar sakte*" ("I never gave up. I am not afraid. You too should not be afraid. What can they do to me? There is nothing (more) they can do to me"). In September 2014, she traveled to London, to speak at a conference hosted jointly by the Universities of Warwick and Westminster. A meeting with British MP Simon Danczuk led to a debate in the British parliament on human rights abuses in Kashmir.¹ There has never been any discussion or debate on human rights in Kashmir in the Indian parliament.

"There Is No Justice"

Parveena's courage and compassion are unique, but the disappearance of her son, the stages of her continuing search for truth and justice, and the blocks she encounters are illustrative of the total power exercised by the Indian military in Kashmir.² A report on the working of *habeas corpus*³ over the period 1990 to 2005 finds that that this writ, which is the basis for the rights to life and liberty (Clark and McCoy 2000), is absent in Kashmir

(Agrwaal 2007b). Agrwaal recalls the basic legal maxim "*Ubi jus ibi remedium*," that is, where there is a right, there is a remedy, or a way to enforce that right. If there is no way to enforce that right, it does not exist. The rights to life and liberty therefore do not exist in Kashmir. Agrwaal concludes that: "... the writ of habeas corpus is a complete failure in Kashmir. It did not protect the right to life. Nor did it punish those who violated it. What then was the purpose of these proceedings? They merely perpetuate the myth of justice and the myth of a functioning judiciary." While the Kashmiri judiciary and civilian administration have been reduced to powerless spectators, and occasionally collaborators, in military rule, their continued existence is an essential part of the narrative of Indian rule as "democratic."

As Agrwaal notes, enforced disappearances exemplify impunity and disregard for the rule of law. His analysis of 88 cases from 1990 to 2005 reveals the same lack of accountability and refusal by military authorities to cooperate with the judicial process, as seen in the case of Javed Ahmed Ahangar. Yet the charade of a functioning judicial system continues to be played out year after year. Agrwaal concludes that the subversion of the judicial system in Kashmir is complete, and systemic: "It is not at all easy to describe something that is a parody of the real thing. It is almost impossible to describe the parody when its perpetrators pretend to take their farce seriously, refuse to acknowledge its breakdown and instead, embellish the lie they act out with the patina of truth at every stage" (2007b, 25–26).

Parveena's experience provides a template of the crime. An Amnesty International report on disappearances in Kashmir followed the case of Javed Ahmed Ahangar closely. In the first instance, senior police officers acknowledged that Javed was in their custody, and that he was being treated at a military hospital. A pass for entry to the hospital was provided, signed by the DIG of police.⁴ At the hospital, there was no sign of Javed, and no record of his admission. After a second fruitless visit by the parents to the hospital, the DIG was reassured the family that Javed would be released soon.

The following day, Javed's mother, Parveena Ahanger, approached the DIG (Deputy Inspector General) of Police who told her that

Javed had been admitted to the Military Hospital Badami Bagh and would be released within two or three days. When this did not happen, she approached the Director General of Police who issued the following order . . . : "Shri Ghulam Nabi Ahanger, his wife Mst. Parveena and Miss Raja may be allowed to enter Military Hospital to see Javed Ahmad Ahanger who is under treatment there. This has approval of DG Police J&K." The family did not find the detainee at the hospital; there was no record of his admission to hospital. When the DIG was approached again he reiterated that Javed would be released within days. A second visit to the hospital did not yield any further insight into his whereabouts.⁵

The family's next step was to file a First Incident Report (FIR) at the local police station (alleging abduction or kidnapping with intent to murder); then a habeas corpus petition at the High Court. The police story now changed, and the DIG filed an affidavit that Javed Ahmad Ahanger had never been taken into custody. Due to pressure from the family, a judicial inquiry was instituted, and three officers of the National Security Guards (NSG) of the Indian Army were identified as the perpetrators. They have never shown up in court to answer the charges against them. The Amnesty report records that: "In October 1991, the Jammu and Kashmir High Court directed that a judicial inquiry into the "disappearance" be carried out. An Additional District and Session Judge, Srinagar, was entrusted with the task and submitted his report to the court in 1992. After examining several witnesses, including police officers, the judge had found that there was evidence to show that Javed Ahmad Ahanger had been arrested by members of the NSG and that he had subsequently "disappeared." None of the three NSG officers alleged to have carried out the arrest followed the direction to appear before the investigating judge."

The final report on the investigation was submitted by the Shergarhi police station to the High Court in December 1995. The High Court directed the Home Department of the state government to apply to the Indian government to sanction the prosecution of the three officers. Under the Armed Forces Special Powers Act, in force in the state since 1990, Indian army personnel cannot be prosecuted in civilian courts, even if

accused of human rights violations, without permission from the central government in New Delhi.⁶ In July 1996, the Indian Home Ministry refused permission to prosecute the three army officers. The official reasons given for the refusal are both arbitrary and contradictory, claiming shortcomings in the police investigation. They are cited in the Amnesty report:

- a) During investigation by the Police, the three officers were neither associated with the investigations nor summoned for identification and recording of the statements by the Investigating Officer. The Investigating Officer at no stage even intimated the officers under whose control these three officers were working, to produce them before him for purposes of investigation. Even the rank, parentage, age and the initials of the three officers have not been mentioned.
- b) That the Investigating Officer has not examined some of the prime witnesses appearing in the Inquiry Report of the Additional Distt. & Sessions Judge, to arrive at a logical conclusion about the arrest of Shri Javed Ahmad Ahanger.
- c) It seems that the Investigating Officer has not conducted investigations independently and mainly relied upon the Inquiry Report of the Additional Distt. & Sessions Judge, Srinagar.
- d) It seems that the investigating Officer has not conducted the investigation in accordance with the prescribed procedure.

At the time of writing, lawyers, human rights activists, victims' families, and survivors are not aware of a single case over a period of twenty-three years where permission to prosecute army personnel has been sanctioned by the Indian government.⁷ Just as her experience is iconic, Parveena recognizes that the refusal by the Indian government to grant permission to prosecute those guilty of the abduction of her son has wider ramifications. If the legal system was allowed to follow the course of justice for her missing son, she says, it would open the door for the thousands of others just like her. So the door stays closed.

Variations on the theme of obstruction of justice can take many forms. The first stage is the refusal by police to file the First

Incident Report (FIR), which constitutes basic evidence of the crime. It can take days, even months, and pressure from popular protests, media reports, and occasionally bribes before police will even file the FIR which reports the disappearance. In many cases, a court order is needed before the police will file the incident report. As a matter of state policy, police will try and avoid any mention of the armed forces in connection with the abduction or illegal detention. The Amnesty report on disappearances quotes one particularly chilling circular, sent out to all police stations from the Home Department, Jammu and Kashmir in April 1992, directing them to “refuse to file FIRs against the armed forces without the approval of higher authorities, and refrain from reporting accusations of misconduct on the part of the armed forces in their daily logs.”⁸ Popular or sometimes political pressure forces the police to investigate disappearances and identify the perpetrators, largely based on eyewitness accounts. Army personnel refuse to cooperate with police investigations and to appear to answer charge against them. Local courts have no power to compel army personnel to stand trial for the crimes they are accused of committing.

The pattern of crimes committed by the military with impunity is remarkably consistent over the decades. The *de facto* and *de jure* impunity provided to Indian forces in Kashmir extends over a quarter of a century. Recent reports by Amnesty International (2011 and 2012) record the persistent denial of the right to liberty through arbitrary detention, which can be prolonged for as long as ten to fifteen years. With their bitter firsthand knowledge of the failure of the Indian judicial system to deliver justice, it is not surprising that Parveena and the families of the APDP immediately grasped and followed the possibilities for accountability under international justice by reaching out to the United Nations High Commissioner for Human Rights in 2007.

In a remarkable merging of the strands of memory and justice, the international human rights system is itself evolving toward creating mechanisms to overcome the impunity provided by national governments to human rights abusers. Though such transitional and international justice mechanisms remain imperfect, partial, and incomplete, the concerns of the victims

of human rights abuses that drive these are recognized by the families of the APDP. While it can take decades to bring abusers to justice, cases as diverse as universal jurisdiction prosecutions for crimes committed in Guatemala and the criminal tribunals established by the UN for the former Yugoslavia, Rwanda and Cambodia, offer hope and affirmation to the families of victims in Kashmir. These initiatives, and their applicability to Kashmir, are discussed in Chapter 9.

The discovery of thousands of unmarked mass graves in various districts of Kashmir since 2007 has added another layer of trauma to the families' experience.⁹ Faced with the possibility that their loved ones' mortal remains might be buried there, APDP members have called for DNA identification of the bodies. APDP families are united in insisting that the discovery of the graves and possible identification of the bodies does not end their quest for justice. The graves are proof of the crimes that have been committed, and in many cases the identity of the perpetrators is known (see APDP 2014; Human Rights Watch 2008; Agrwaal 2007 and 2008). Parveena voices the determination of the families to bring the perpetrators to justice, to answer the charges against them: "You took our children from our homes. Tell us what you did with them. Where did you take them? If they are dead, tell us where they are buried."

Like Parveena's son, thousands of young Kashmiri men have been taken away by Indian forces and their local collaborators. The images are both unique and universal: on the one hand the grieving families: parents, children, grandparents, and the photos of the missing relative that accompany them everywhere on the search. Their only weapon is their determination to find the truth and justice for the crimes committed against them. On the other hand is the army, a massive occupying force, with all the weapons of modern military and statecraft at its disposal. The moral voice of the families' call for truth and justice provides a stark contrast to the immorality and illegality of military rule. It is the remarkable achievement and human legacy of the families' struggle that the outcome of this confrontation is not decided in favor of those with the power over life and death. The struggle for sovereignty is a profoundly moral one. Thus the great mystery may be not the cruelty

and rapacity of the powerful, but the courage of the weak and powerless. That the tears of the innocent carry a particular form of grace, may be understood in the realms of poetry and mysticism, but not yet and perhaps not ever through academic analysis.

A *Ghazal* for Parveena

For those who have lived and worked closely with Parveena, this very closeness can become a barrier, making it difficult to see in perspective the heroism of her long struggle and the moral integrity of her choices. Her life has inspired both poetry and song. The frontispiece of this book is a *ghazal* written by a young Irish woman, a poet, who met Parveena in Dublin in 2011. The *ghazal* is a sonnet form rooted in Islamicate culture, built around themes of separation and love. The Irish poet felt it was the only adequate medium for her response to Parveena's life and story. She writes under a pen-name, another time-honored practice associated with the *ghazal*, but for a more practical reason. As the silence on Indian violence in Kashmir is broken, more and more foreign scholars, writers and journalists writing about the abuses are banned, deported, and denied visas.

The interplay of culture and memory comes full circle in the poetry and music of a young Kashmiri rap artist. MC Kash, whose real name is Roushan Ilahi, was inspired by the political potential of hip-hop. Listening to the music of Eminem, Tupac Shakur, and Immortal Technique, he realized he had found the way to give voice to his own experience of growing up under military occupation. His debut single "I Protest" was released during the rising of 2010 and quickly became the anthem of the conflict generation.¹⁰ The rap beat echoes the gunfire that is the soundtrack to daily life in Kashmir. It ends with a deeply moving recitation of the names of those killed in the uprising. After his album was released, the studio in Srinagar where he recorded was raided by the authorities and shut down. Despite the fact that his music was reviewed in *Rolling Stone* and on MTV, no studio in Srinagar dared to open its doors to him, and he was forced to move to Bombay (Mumbai) to continue recording.

A biographical film on Roushan's life, *Take it in Blood* traces his attempts to place his life in the context of the Kashmiri struggle. The story of Parveena's quest for justice becomes a form of understanding and belonging. The soundtrack of their meeting is a song that shares the title of the film. Roushan's meeting with Parveena, recorded on film, the recognition by both that he might be her son, is the subject of "Take it in Blood."¹¹ The film ends with Parveena listening to the song for the first time. The track blends traditional Kashmiri music and vocals with MC Kash's lyrics. The Kashmiri lyrics transform in the course of the song, reflecting on the ambiguity and power of sacrifice:

*"O my mother, I would die, wipe my tears which are nothing, but
blood. . . .*

*She hugs me like the son she lost, in the course of a holocaust . . .
makes me wonder what it takes, to love when you seen so much hate,
to be so strong when you've been so down. . . .*

O my mother! I am alive . . . my tears are nothing! But blood."

The Burning of Chrar-i-Sharief

On June 24, 2012, fire broke out in the shrine of Dastageer Sahib in the Khanyar neighborhood of downtown Srinagar. Though fire engines rushed to the spot, they were unprepared to handle the blaze and quickly ran out of water. People in the neighborhood gathered to pray as young men made desperate forays into the burning shrine to save the relics and rare manuscripts inside. People literally took matters into their own hands and created a human chain that relayed buckets of water from the river nearby. After five hours, they succeeded in putting out the fire and saving parts of the shrine. The fire was officially attributed to a short circuit; however, the fact that it began simultaneously in two buildings at opposite sides led to suspicions of arson. The Forensic Science Laboratory (FSL) found no evidence of a short circuit, and a police investigation into the fire was closed a year later without any results.¹

The shrine contains relics of the Sufi saint and mystic Sheikh Syed Abdul Qadir Jeelani, popularly known as Pir Dastageer Sahib, who lived in the 11–12th centuries. He never visited Kashmir, but his followers brought back relics from Baghdad, where he was buried. The building itself was two hundred years old, and an essential part of the cultural as well as spiritual heritage. The Sufi shrines of Kashmir symbolize its unique cultural ethos, with central Asian, Chinese, and Persian influences in the pagoda-style architecture, intricate woodwork worn smooth by generations

of pilgrims, and richly decorated interiors. As *ziyaret* (pilgrimages), they are the focus of spiritual life, revered by people of all faiths. The destruction of the Dastageer Sahib shrine in an inexplicable fire recalled the burning of Chrar-i-Sharief in 1995. Kashmiri journalist Gowhar Geelani spelled out the connections that many made privately: "In May 1995, a two-month-long confrontation between the militants (both Kashmiri as well as foreign) and the Indian army at the renowned town of 'Chrar-e-Shareef' in Badgam district of Kashmir ended in a catastrophe. The tomb of most revered Kashmiri Saint Sheikh Noor-ud-Din Noorani, widely known as 'Alamdaar-e-Kashmir' and 'Nund Reshi', and the shrine built in his memory there was set alight in mysterious circumstances. Seventeen long years down the line, Kashmir is yet to figure out what had actually happened there. Like many other tragedies, this too is our collective tragedy. We have too many conspiracy theories; very few answers; and sadly; even fewer facts."²

The Sufis are the mystics and teachers revered and loved as the founders of Islam in the Kashmir valley. The *ziyaret* hold a special place in the history and religious life of the Kashmiris.

*O thou art like the unending ocean of water!
Me! A tiny or small streamlet of water.
Either engulf and finish me in thy vastness,
Or make me too vast and free of boundaries.*³

This verse by Allama Iqbal, the greatest Urdu poet of the twentieth century, evokes the nature of Sufism's relation to the divine and explains in some ways the place that Sufism holds in Islamic societies. Escaping the harsh caste system and the cruel oppressive policies of a succession of Hindu rulers (Schofield 1997, 11–15), Kashmiris quite deliberately chose this syncretic and tolerant model of belief and coexistence. The influence of the Sufis encompasses not only religion but also poetry, music, art, architecture, and customs. They are also associated with the introduction of the handicrafts which are uniquely Kashmiri expressions of aesthetic and cultural values.

Destruction of homes and heritage by fire has been a continuous feature of the counterinsurgency. Shops, schools, cinemas,

entire streets, village homes and crops were consumed time after time by conflagrations attributed by the army to “cross fire.” Entire downtown neighborhoods in Srinagar, Sopore and Anantnag/Islamabad have been gutted by fire in “gun battles.” Eyewitness accounts such as those from Sopore⁴ reveal that the fires were set deliberately by the soldiers. Homes and villages too were routinely burned down in punishment for harboring militants, even if unwillingly. The burning of the six-hundred-year-old shrine at Chrar-i-Sharief was attributed by official sources to “cross fire.” In 2012, conflicting statements revived the controversy over whether the fire was set by the militants or the army.⁵

I traveled with Parveena and her family to Chrar-i-Sharief in 2007, twelve years after the fire. Echoes of the grief and destruction of the *ziyaret* had traveled halfway across the world to New York, where I was living in 1995, and lodged deep somewhere in the unconscious, that place of the spirit which sees things clearly, a splinter of trauma that encompassed the years of violence. In Kashmir, the saint “called” to me as he does to so many others, and recognizing this, Parveena made plans for us to visit his shrine. The 20-mile journey took over three hours, not only because of the condition of the road, but also due to a long military convoy that had stopped traffic for miles, forcing us to take back roads to rejoin the highway some 5 miles on. The road took us past Shopian, with thickly forested mountain, boulder-strewn streams, and meadows crawling with army camps. At Chrar, the shrine and the town nestled closely around its benediction were surrounded by barbed wire, armed soldiers, and sandbagged machine gun nests and checkpoints.

The rebuilding was almost complete, the design recreating the serene pagoda roof that rose with timeless grace above the rebuilt town, transcendent, on a different plane from the razor wire and soldiers that surrounded it. The visit was an intensely emotional experience, a welling up of the sorrows of years, told to the saint as unburdening the soul to a friend, helper, and guide: the act of telling, aided by the prayers of the guardians of the shrine, in itself a source of consolation. The burning of Chrar itself had evoked memories of the siege of Hazratbal in 1993, the land and people alike under siege both physical and spiritual. For me personally it

was the outcome of a long journey of discovery, to come face to face with the uncouth vandalism of counterinsurgency, at one of the sites where it attempted to destroy the beauty and grace that it had no hope of understanding. The *ziarat* were the first meeting places of the families of APDP.

Talking to other pilgrims and the townspeople, the first response was that miraculously, the fire stopped at the innermost sanctum, and spared the tomb where the saint is buried. Memories of the “standoff” between the army and militants in the shrine showed that it was in fact a siege. The shrine and town had been surrounded by the army, which brought in heavy artillery to shell the town. The townspeople fled to the surrounding hills and watched as their homes were destroyed by the army. The shrine and town were shelled indiscriminately for days, an operation described in the coded language of counterinsurgency as “gun battles” between the army and the militants. The resulting fires burned for three whole days. Some 1500 homes in the town were burned down.

Grief and consolation overlapped in the different stages of the *ziyaret*. The tradition of visiting the shrine includes a meal in the courtyard adjoining the building. Parveena had packed a picnic lunch (she is an amazing cook, and her saffron tea is famous), which was shared with other pilgrims. The leftover rice was scattered to the pigeons, who are an essential part of the pilgrimage. After lunch, the routine of a visit to Charar took us to the shops in the steep, curving streets around the shrine to buy souvenirs—wooden book stands, pencil cases, dishes, and spoons with carvings that echoed the lost artwork of the shrine.

Returning to Srinagar by way of Shopian, we stopped outside the town to walk to the rock-strewn meadows by the river. A conversation with a young woman we met by chance gave a face and voice to the rumors of the sexual violence of the counterinsurgency. “How do I explain to you? Every day in our lives is like this: They (the soldiers) come to our house every morning and demand tea and “service.” I make them tea. I go outside the house—to the fields, to the orchards, to the cattle shed—because I don’t want my mother to see me like this.” And yet she fought the soldiers when they attempted to beat and arrest her younger

brother, shielding his body with her own and being badly injured in the process. For reasons of her safety, her name and other details cannot be disclosed. Within families, women talk in hushed voices of girls who are taken away to army camps and, after weeks or months of sexual abuse, sent back home.

*This is home—the haven a cage surrounded by ash—the fate of Paradise.*⁶

The exercise of military power is rarely directed toward purely functional ends. Military goals are not solely strategic ones, but rather are shaped by the political and cultural processes of imagining the enemy (Sahlins 1966). An ironic and deadly counterpart to the official discourse of counterinsurgency, which speaks of “winning hearts and minds,” the psychic violence of counterinsurgency attacks the deepest levels of belief and affect. The destruction of refuge, and of shelter, physical or emotional, is a consistent goal of this violence.

In a very practical sense, human rights defenders—lawyers, doctors, judges, writers—become targets, demonstrating to the subject population the dangers of helping anyone who has run afoul of the army. By the mid-90s, the newly created foot soldiers of the counterinsurgency, the dreaded renegades, carried the war to the homes of human rights defenders. Back in Srinagar after the visit to Chrar, I was working my way through the newspaper archives for 1995-96, looking for information on the killing of Jalil Andrabi, the Kashmiri human rights lawyer who was abducted, tortured, and murdered by the army in 1996.

After the burning of Chrar-i-Sharief, Indian counterinsurgency was on the offensive. 1996 was a turning point, the year the army gained the upper hand: hundreds of militants had been killed as fratricidal conflicts among militant groups with different political agendas—religious versus secular, pro-Pakistan versus pro-independence—led some to collaborate with the army against the others. The divisions among the militant groups enriched military intelligence, and the secular, proindependence Jammu and Kashmir Liberation Front (JKLF) lost hundreds of its armed cadres to army ambushes and raids. The military setbacks also created a class of “surrendered” militants, those who had abandoned the struggle out of disillusionment, or been arrested, tortured, broken, and

then released to fight for India. These were the dreaded Ikhwanis—armed, trained, and paid by the army, and turned loose to prey on the civilian population (Baba 2014; Human Rights Watch 1996). Newspapers carried more and more reports of violence and killings by “unidentified gunmen,” a category closely related to the surrendered militants, who also came to be known as renegades.⁷ Human rights defenders—lawyers, doctors, and journalists—were particular targets of the “unidentified gunmen.”

This was also the year that the Indian government felt confident enough to hold parliamentary elections in Kashmir for the first time since 1987. Seen in retrospect, media reports from 1996 revealed the strategy that set the narrative stage for a new wave of state terror by the army, paramilitaries, and renegades. The controlled and heavily censored press carried warnings by military and political figures of impending violence, grim warnings of threats from militants to disrupt elections. The violence spiked in waves of assassinations, kidnappings, rapes and extortion by the new category of combatants described in the media as “unidentified gunmen,” “masked gunmen.” A new reign of terror was afoot. The renegades had been unleashed.

The Killing of Jalil Andrabi

Jalil Andrabi was a Kashmiri human rights lawyer who dared to challenge the army in the early 1990s. Andrabi moved the local courts in Kashmir to stop the army from torturing and killing prisoners. He founded the Kashmir Commission of Jurists to uphold basic human rights through legal action, and filed thousands of habeas corpus petitions on behalf of detained Kashmiris. Representing prisoners in court, Andrabi won rulings to prevent the army from carrying out torture and extrajudicial executions, or from transferring Kashmiri prisoners to jails outside the state where they would be cut off from family and legal support. He was also outspokenly committed to Kashmiri independence. He was interviewed by international media like the BBC and worked closely with organizations like Human Rights Watch, the International Commission of Jurists, and Amnesty International to document the abuses. In 1995, he traveled to Geneva to address

the UN Human Rights Commission; he was due to do so again in 1996. He was, according to the Office of the United Nations High Commissioner for Refugees, “a frequent caller at diplomatic missions in New Delhi, the U.N. Human Rights Commission, and the U.S. State Department.” He was warned repeatedly by the army to stop his work, but chose to continue. He also refused the choice to stay in the relative safety of Delhi and returned to Kashmir.

A speech he made in February 1996 in Delhi, a few weeks before his murder, provides a vivid picture of the situation in Kashmir:⁸

The enormity and the level of atrocities being committed on the people of Kashmir for the last more than six years has been such that it amounts to the abuse of sovereignty. The magnitude of the atrocities and the crimes being perpetrated on the people of Kashmir is both macabre and heart breaking. Some of such brutalities have been documented and recorded by some European and North American press and human rights organizations like Amnesty International, International Commission of Jurists, and Human Rights Watch Asia also. What is reported by these organizations is only the tip of the iceberg. It is really difficult to realize the real magnitude of atrocities committed on the people of Kashmir. According to some estimates more than 40,000 people have been killed, which include all—old, men and children, woman, sick and infirm. The youth of Kashmir have been mowed down. They are tortured in torture cells and as result of this, thousands of youth have been killed in police custody. These atrocities being committed on the people of Kashmir, are not mere aberrations. These are part of deliberate and systematic state policy being perpetrated on Kashmir, which is aimed at to silence the people of Kashmir into subjugation.

He had seen his friends and colleagues, lawyers and journalists committed to ending the abuses, under constant threat. In his final public speech, Jalil Andrabi memorialized them: “In 1992–1993, three leading human rights activists were killed in Srinagar. On December 5, 1993, H. N. Wanchoo, a retired civil servant and trade unionist who had documented hundreds of extrajudicial executions, disappeared, and—tortured by the security forces—was shot by unidentified gunmen. On February 18, 1993, Dr.

Farooq Ahmad Ashai, an orthopedic surgeon who documented cases of torture and indiscriminate assaults on civilians, was shot by CRPF (Central Reserve Police Force, a paramilitary force used for counterinsurgency operations)] troops who then reportedly delayed his being taken promptly to the hospital for emergency care. He died shortly after finally reaching the hospital. On March 3, Dr. Abdul Ahad Guru, a leading member of the militant J&K Liberation Front who had documented abuses by Indian security forces, was abducted by unidentified gunmen and shot dead. The government of India has never made public any action it has taken to investigate these killings and prosecute those responsible." In April 1995, two unidentified gunmen opened fire on Mian Abdul Qayoom, President of the J&K Bar Association, leaving him paralyzed. In October, High Court Advocate A. G. Sailani was killed by "unidentified gunmen" a few yards from an army bunker in Srinagar.

The killing of Jalil Andrabi was staged as a public spectacle. For three days, the posh neighborhood of Peer Bagh, where he lived, was surrounded by military vehicles and cordoned off; anyone entering or leaving was stopped and questioned. Jalil Andrabi's brothers, who lived in the same house and resemble him closely, were stopped this way. On March 8, 1996, the car in which Jalil Andrabi and his wife were traveling was waved to stop, and he was taken by soldiers to an army truck. His wife, Rifat, pleaded with the officer in charge to release her husband, but he refused. She could not drive, so, as the convoy sped off, she found an auto-rickshaw to follow them. The trucks were much faster than the auto (a makeshift motor scooter with passenger seats and an awning, the staple of public transport in the subcontinent), which could not keep up with the convoy.

The same evening Rifat Andrabi attempted to file an FIR (First Incident Report) at the local (Sadder) police station, but was refused. An Amnesty International report records interference from the police, army and central government to keep the army from being mentioned in connection with the abduction: "The Inspector General of Police reportedly reassured Rifat Andrabi on the phone later at night that Andrabi was "with them" and would be released after the completion of investigations. On the

following morning, the Jammu and Kashmir High Court Bar Association, of which Andrabi was a member, filed a habeas corpus petition in the High Court which then directed all the law enforcement agencies in the state to declare whether they were holding Andrabi. In a sworn affidavit presented on 11 March, the army stated before the High Court that "Rashtriya Rifles do not operate in the said area, neither was any member deputed/present at Parayapora at 5.30 pm nor did any member of Rashtriya Rifles apprehend or receive the alleged detainee on the date and time given. . . ." Police reportedly urged the family to alter their FIR so as not to mention suspected army involvement but to declare instead that Andrabi had been taken away by unknown persons. The family agreed to do so on condition that they could meet Andrabi. On 13 March, the FIR was finally registered but the family was not informed of Andrabi's whereabouts. On the following day, the High Court said it was not satisfied with affidavits denying the custody of Andrabi which junior officers of the army and the home ministry had filed and ordered secretaries of the Defence and Home Departments to file their affidavits relating to the whereabouts of Jalil Andrabi."⁹

On 26 March, Andrabi's body was found in the mud on the banks of the Jhelum, the river that runs through Srinagar. The postmortem report records evidence of torture: wounds to head and body; facial bones broken, eyes torn out, skin all over the body loose and peeling, gunshot wounds to the head which finally caused death. Dumping bodies into rivers is a favored method used by the armed forces to dispose of those who die under torture. Srinagar residents who live near the Jhelum are accustomed to finding bodies and body parts in the river and on its banks. Cynthia Mahmood, an anthropologist at the University of Notre Dame who has witnessed and experienced the violent silencing of dissidence in India herself (2008) wrote: "In Muzaffarabad, on the Pakistani or 'free' side of Kashmir, a blackboard by the banks of the Jhelum River keeps count as Kashmiri bodies float down from across the borders. (When I visited in January 1997, the grim chalk tally then was at 476.) Given the deep mythic significance of India's rivers in the Hindu tradition, this defilement is especially telling. 'The largest democracy in the

world' has polluted its sacred waters with the bodies of its tortured citizens."

*In the ink-wet dawn, a corpse was found, as if floating, like so many corpses, in the Jhelum. Soon, the police will throw it on a pile of bodies in a truck, and drive it to a neighbourhood where perhaps relatives will identify it. The truck, like the dawn, is always blue.*¹⁰

Andrabi was one of the leading citizens of Srinagar, and his killing was meant as a warning that no one was safe from the army or beyond its reach. Protests against the killing, led by Andrabi's colleagues at the Srinagar High Court Bar Association, resulted in an investigation into the abduction and murder. A police Special Investigation Team (SIT) was created at the order of the Srinagar High Court. The team's report identified one Major Avtar Singh of the 35 Rashtriya Rifles as perpetrator. The Court's proceedings over the next eleven years record its futile attempts to force the police and army to produce Major Avtar Singh in court to stand trial for Andrabi's and twenty-eight other murders while he was posted in Kashmir in the early-to-mid 90s. The Court went so far as to hold the members of the SIT in contempt for failing to bring Major Singh to trial. The army's response to repeated requests from the High Court was to claim that it was unaware of his whereabouts, that he had acted in an individual capacity, or that he was "absconding."

While the army, which continued to pay his pension, claimed that it was unable to find Major Singh, a reporter for Indian Express was able to track him down in Ludhiana in 1998 and interview him. In the interview, which was never published, Avtar Singh claimed he was being made a scapegoat by the government.¹¹ In 2004, the army informed the court that it intended to court-martial Singh, rather than produce him in court to answer the charges against him. Needless to add, the court-martial never happened. The High Court had ordered the government and police in 1997 to impound Singh's passport and to watch all airports, ports, and railway stations to prevent him from leaving the country. He was nevertheless able to obtain a passport and travel to Canada.¹² When next heard of in 2006, Major Singh

was in Canada seeking asylum, ironically, on the grounds that the Indian government was trying to frame him for the murder of Jalil Andrabi. The Canadian government asked Interpol for information regarding the murder charges against him, and this request was relayed by way of local police to the court at Budgam.

Groups like the Canadian Center for International Justice and Amnesty International tried to persuade the Canadian government to fulfill its legal obligations as a member of the International Criminal Court to try Major Singh for crimes against humanity. Despite a thorough investigation in 2007 by the War Crimes Unit of the Canadian Department of Justice, no prosecution was initiated. Singh's asylum application was denied, and that was deemed sufficient punishment, as it ensured that he would not be able to apply for immigration status in any other country where he might choose to settle. It was doubtless with a sense of relief that the Canadian government found that sometime in 2006/7, Avtar Singh had illegally entered the United States.

There were two consequences of Singh's presence in Canada. The legal documents from the case were scrutinized by international human rights lawyers who became familiar with his modus operandi of using progovernment militants to carry out a campaign of kidnapping, extortion, torture and murder. These militants, known as renegades, were recruited from among surrendered militants, trained, armed, paid and protected by the army. They operated alongside special counterinsurgency forces like the Rashtriya Rifles to terrorize the civilian population and silence critics. According to the statements gathered by the SIT, the manner and reasons for the killing were varied—some of the victims were abducted and tortured to death, others were hanged by Major Singh himself, their bodies left lying along the National Highway with the intention of blaming the crime on the proindependence militants. The reasons for the killings were also varied—extortion, personal animosities, settling family scores, random terror. With his signature ruthlessness, Singh perfected a strategy of disposing of the evidence and effectively silencing witnesses, by killing in turn the renegades who had carried out the murders he ordered. One of the statements recorded by the SIT recounts a conversation between

Avtar Singh and a renegade who managed to survive this killing spree: "At my instance [T] (name withheld) had asked Major Avtar Singh why he killed Sikandar, he was working with army. Major Avtar Singh replied that Sikandar and his associates know our secrets. Therefore we cannot trust them. In case he will be caught by police, he will tell everything about us and will expose the army. Therefore it was better to kill them." This deadly domino effect brought the known number of Singh's victims to twenty-eight. Journalists who knew of him at the time described him as "a tyrant" and "drunk with power." His colleagues nicknamed him Bulbul, "the nightingale."

Residents of the neighborhood of Batamaloo in downtown Srinagar remember Major Singh taking away scores of youths who were killed in various ways¹³: "Our hands were tied from behind. The Major ordered his troops to throw the boy into the Jhelum and they did," says Junaid, one of Singh's would-be victims. "I closed my eyes and started praying, thinking I would be the next but I was brought back. I feared that nobody would know about my fate." Junaid recalls the time when he was held in Palhalan camp in 1997 and Singh brought a local teacher over. "The Major tore his undershirt, bundled it and shoved it in the teacher's throat with his cane," Junaid says. "The teacher died in front of my eyes." Junaid says he was later shifted to Shariefabad army camp, on the outskirts of Srinagar. Major Singh would show up there, too, this time bringing his neighbors, Mohammad Shaban and his son Yahya Khan of Batamaloo, to the camp.

"Yahya was already dead when he was brought to the camp, his father was tortured to death subsequently," said Junaid, who was released from Shariefabad camp two and a half months later. His memory of what he came across inside the garrison is heart numbing. "The Major was notorious for burning people alive in an iron tank inside the Shariefabad camp," Junaid says.

A second consequence of Singh's presence in Canada was a showdown with India that Canada would lose. Starting some time in 2007-8, Canadian immigration authorities began denying visas to Indian military and paramilitary personnel who had been involved in counterinsurgency operations in Kashmir. When this news hit the Indian media in 2010, the Indian government's

response was bullish, demanding that the Canadian government respect “Indian sensitivities” on Kashmir.¹⁴ In the run-up to the Indian Prime Minister’s visit to Canada for the G20 summit in May 2010, the Indian government issued a clear ultimatum—Canada could not afford to offend India in the middle of a global recession. The Canadian Immigration Minister apologized profusely, called the policy a mistake, and promised that it would be discontinued.¹⁵ On immigration blogs, it was predicted that heads would roll; and so, with no discussion of the abuses that led to the visa denials, the first and only international effort to hold Indian military personnel accountable for human rights violations ended ignominiously.

In February 2011, Major Singh again made local headlines in a small town in Fresno County, California. His wife called the police to report that he had tried to choke her. She also told the police he was wanted for murder in Kashmir and that there was an Interpol Red Notice for his arrest. Though living illegally in the US, he owned a thriving trucking business. The Selma Police Chief called the State Department to ask if they should hold Major Singh so that he could be handed over to Interpol, but was told to let him go.¹⁶ His wife did not press charges, and for another year he lived in comparative anonymity. In Kashmir, Jilil Andrabi’s family and the High Court in Budgam continued to pressure the Indian government to extradite Singh to stand trial in India.

It was clear to observers following the case that this was in fact the last thing the Indian government wanted; it was also clear to Singh himself, who gave a chillingly candid interview to an Indian journalist in June 2011.¹⁷ He claimed that he knew who exactly was responsible for the murders and that the Indian government did not want him in the dock: “There is no question of my being taken to India alive, they will kill me. . . . The agencies, RAW, military intelligence, it is all the same. . . . If the extradition does go through, I will open my mouth, I will not keep quiet.”

In this standoff with the Indian government, Singh had absolute confidence that he would be protected: he even called the local police to complain about harassment when he heard rumors that a Kashmiri journalist had tracked him to his home in Fresno

County and wanted to interview him. Despite an Interpol notice that he was wanted for murder, he was sure that the local police force would not touch him. In the end, it was not the law but his own haunted conscience that forced a final accounting for his crimes.

On Saturday 9 June 2012, Major Avtar Singh shot his three children and his wife, then committed suicide. Before turning the gun on himself, he called the Sheriff's office and told them that he had killed four people. The SWAT team that responded to the call found his two younger children, ages 3 and 15, and his wife, dead of gunshot wounds to the head; the oldest son, 17 years old, was critically injured, but alive. He died a few days later. He too had been shot in the head.¹⁸ The execution-style gunshots to the head were identical to those which killed Major Avtar Singh's most famous victim.

The killings in California, if not those in Kashmir, finally forced U.S. media to take notice of the crimes committed by Singh. *The New York Times*, which for the past year had alternated stories of the discovery of mass graves in Indian-administered Kashmir with accounts of booming tourism (which the Indian establishment views as a return to "normality") without ever making a connection between the two, finally conceded that peace can only be based on justice for past crimes.¹⁹ In Kashmir, the news of Major Singh's latest murders and suicide received a subdued response; in most cases, a first thought was for the innocent family members. As Jalil Andrabi's brother Arshad said, their deaths were due to the Indian government's refusal to initiate extradition proceedings: "These lives could have been saved if a trial of Maj. Avtar Singh was conducted on time. We have lost that chance now. He was a known murderer and we are appalled that he was even shielded in the United States. It's a failure of justice at all levels."²⁰

Kashmiris are aware that Major Singh was not playing a lone hand; the abuses, torture and killings continue. As the nature of the revolt against Indian rule changes, returning to its roots as a popular uprising, so do chosen victims of the repression. This time they are teenagers, boys, and young men who grew up knowing only the occupation, who came out into the streets to

challenge Indian abuses in the summer of 2010. In the course of this popular uprising, which foreshadowed the Arab Spring, Indian forces killed 122 unarmed protesters, most of them teenagers, the youngest 8 years old. Since then thousands have been arrested and tortured, many of them young children. They are charged under the Public Safety Act with “waging war against the nation.” Pictures posted on Facebook show these children being beaten and arrested by police and paramilitaries, brought to court and for school examinations in handcuffs and chains. Kashmiris posting on Facebook about the continuing abuses are under constant threat from the army and police.

Matt Eisenbrandt of the Canadian Center for International Justice is a human rights lawyer who has been among the pioneers in applying the principles of Universal Jurisdiction to bring human rights abusers to justice, no matter where they try to seek shelter²¹: “The Avtar Singh case demonstrates perfectly why we need universal jurisdiction to prosecute war crimes, crimes against humanity and extrajudicial killings in any court around the world and why governments need to exercise that authority. Clearly, the government of India had no interest in bringing Singh to justice for the murder of Jalil Andrabi. But Singh’s presence in Canada and the United States provided opportunities for him to be held accountable in those countries. My organization, the Canadian Centre for International Justice, urged the Canadian government to investigate and prosecute Major Singh but instead he escaped to California. The U.S. government, after initially locating and detaining Singh and ordering him deported, took no further steps. Despite being fully aware of Singh’s alleged role in Mr. Andrabi’s murder, the United States took no action. Even after Singh was arrested for domestic violence, nothing was done. At each step along the way, governments had the power to hold Singh accountable but they never did. Now we are faced with the latest tragedy, the murder of Singh’s family and his own suicide, committed on North American soil. It might have been prevented, and the Andrabi family should have been given the opportunity to see justice done against Avtar Singh.”

The case outlines with stark symmetry a pattern of targeting human rights defenders while protecting military abusers. The

chilling effect of these killings lasted for over a decade before the mantle of the slain human rights defenders was picked up by the families of the disappeared.

Following his visit to Kashmir in April 2012, during which he met with the family of Jalil Andrabi, UN Special Rapporteur on extrajudicial executions Christof Heyns called upon the Indian government to “continue to take measures to fight impunity in cases of extrajudicial executions, and communal and traditional killings.” Given the lengths to which the Indian government has gone to protect criminals like Major Avtar Singh, these words seem inadequate. A government that provides legal impunity to its military personnel cannot be trusted to investigate and prosecute their crimes; this has always been one of the weaknesses of the international human rights systems. Following precedents from the former Yugoslavia, Rwanda, East Timor, and Cambodia, an International Criminal Tribunal on Kashmir is necessary to record and account for twenty-five years of crimes against humanity. It is from this record that the contours of a political solution can emerge.

“A Sorrow Like Mine”

“I went to the villages, to the forests, to the mountains, to find each one who has a sorrow like mine.”

—Parveena Ahangar

“You must recognize the power of grief. There is a sacredness in tears. They are not the mark of weakness, but of power. They speak more eloquently than ten thousand tongues. They are messengers of overwhelming grief and unspeakable love.”

—Rumi

Individual narratives as told by fathers, mothers, sons, daughters, and wives, of the process of arrest, search, and struggle, reveal the outlines of a system of military control and fear. The search for the missing is a desperate, all-consuming endeavor. It forces the families—housewives, elderly parents, young children, brothers and sisters with families of their own—to confront the army and police. The army camps are infamous as torture centers, where they “eat people.” Prisons, hospitals, morgues become familiar destinations, with each visit raising new fears of what might have befallen the missing one. Dangerous, expensive journeys are undertaken to the far-off Indian cities, where Muslim Kashmiris are treated as foreigners, required by law to register with the police and inform them of all movements, to search the prisons there. In the popular Indian imagination, Kashmiris are tagged as “terrorists,” making them fair game for a spot of nationalist violence, at any time and any place. And yet through the search, the only fear is that there might be some road, some

jail, some location, that one might miss, that one step that would release the dear one from unthinkable torture and pain. The tortures practiced upon prisoners in the army camps and interrogation centers are common knowledge in Kashmir. Then there are the thousands of unmarked mass graves, holding the bodies of unidentified victims killed by army and police.¹ The fears can never be spoken, never forgotten. Traditional songs and poetry of separation and waiting express fear and sorrow. Whether it has been two years or twenty since the disappearance, families cannot stop thinking about the missing one, where he might be, and what might have happened to him. Did the army take him away along with scores of other young men to serve on chain gangs performing hard labor in army camps near the Line of Control? Is it possible, after fifteen years that he is still alive? Is he cold? Is he hungry? What became of him in the army camps where they eat people?

Through these narratives it becomes clear that words like “activism” and “advocacy,” with their roots in Western liberal theory and the underlying idea of rational choice in taking political action, are completely inadequate for describing the compulsions of those living in a situation of political repression and military terror. One does not choose to search for a missing son or father—it is impossible to do otherwise. Family narratives illustrate the financial, physical, and psychic costs of the search; the struggle to survive economically when a father or husband is taken away competes for primacy with the search. Families travel to prisons far from Kashmir where Kashmiri prisoners are held, to Indian cities and to the infamous Tihar Jail in Delhi. They seek news from the army camps, from seers, from shrines and dreams (Geelani 2014). Children whose fathers have been disappeared grow up in orphanages when the mothers and families can no longer provide for them. APDP and its regular program of protests, economic support for the poorest families, and an incipient legal aid program, all sustained with the greatest difficulty, becomes a sort of second family.

Sometimes the disappeared person just vanishes on the way to school or work. The family waiting at home begins a fruitless search; no news is ever heard of the missing person, just rumors.

In other cases, there are witnesses—the arrest happens in front of family members, neighbors, or passersby. The identity of the arresting agency—the army officers and the units they belong to—is known. Often, the army first acknowledges the arrest, telling the family not to worry and the detained person will be released soon; a few days or weeks later the same officers will turn around and deny the arrest of the missing person. The police refuse to file a missing person report (known as a First Information Report or FIR) if the army is implicated. It sometimes takes up to seven years, and repeated orders from the local courts and even the virtually powerless State Human Rights Commission, for the police to file the FIR. In many cases, as in Parveena's, police investigations ordered by the courts identify the perpetrators of the crime. That is where the search comes to a halt. Military personnel have legal impunity from prosecution under the Armed Forces (Special Powers) Act (AFSPA), in force in Kashmir since 1990.

The families' concerns with seeking truth and justice dovetail with international human rights law. Of all the people I met in the course of my work in Kashmir, it was the families of the APDP who zeroed in on the available mechanisms of human rights monitoring through international institutions. They identified with the principles and procedures of the mandates of the UN Special Rapporteurs, recognizing their relevance for their own situation. Despite the UN's lack of active interest in and support for their wrongs, they explore all possible avenues that might bring them knowledge of the fate of the missing person and justice for the crimes committed against them. Their persistence and faith in the universality of human rights forces the UN human rights establishment to engage with their concerns.

While the UN human rights system is meant to be accessible to all victims, there are formidable barriers to the two sides ever connecting, let alone working together. The determination of the APDP, with Parveena's family at the center, helped them take their quest to the next stage. In March 2007, I introduced APDP to the complaints procedure to be followed in reporting disappearances to the UN Working Group on Enforced and Involuntary Disappearances. By the time I returned three months later, there were

already about eighty forms filled out, complete with details about the disappearance, photographs of the missing person, and many more were being circulated in remote villages and mountain hamlets. From that modest beginning, APDP's work in collaboration with the UN Office of the High Commissioner for Human Rights has grown by leaps and bounds. At the time of writing, APDP has recorded nearly a thousand cases of disappearances, and hosted visits to Kashmir by the UN Special Rapporteurs on human rights defenders and on extrajudicial executions.

*I've tied a knot
with green thread at Shah Hamdan, to be
untied only when the atrocities
are stunned by your jeweled return, but no news
escapes the curfew, nothing of your shadow . . .*²

As the record of human rights abuses in Kashmir becomes known, with rape, extrajudicial killings, torture, mass graves documented and publicized, APDP's unique moral voice merges with international human rights law. The families' insistence on justice and accountability as the groundwork for peace provides a moral compass not only for their own struggle but for all efforts to resolve the conflict.

Mughal Masi

Mughal Masi is no more, but her search for her son will not be forgotten in Kashmir. She died in October 2009, nineteen years after her son, Nazir Ahmed Teli, a schoolteacher, was taken away by the army. She was one of the first members of APDP, and the one they all looked to for inspiration and consolation. Her life and story are remembered by the young generation of Kashmiris through eulogy and memoir, which exist precariously in the ether on new media blogs and websites. The fragmentary and partial nature of these memories is no indication of their power to survive time, repression, and censorship.

As the "conflict generation" of Kashmiris takes to the networking and communication possibilities offered by the internet, so

does Indian repression move to new levels. Teenagers posting on Facebook and blogs are imprisoned and charged with "waging war against the nation." They are tortured and then sometimes set free as a warning to others. One such account of two schoolboys detained after the 2010 uprising was written by a friend who visited them after their release: "Tafazzul. . . He unbuttoned his shirt and revealed his bruised back. . . The heart-wrenching pus-filled wounds on his back left a numbness in my back. . . I met Omar after twenty days of his release. During this time he was undergoing medical treatment for the dislocated disc in his back . . . when Omar revealed his arms and legs for his mother to apply ointment to the burn wounds. They were a specific type, circular in shape, with a ring of pus due to infection—typical of cigarette burn scars when it is stubbed out on skin."³

These tortures do not stifle and destroy memory, as they are intended to do; instead they become part of this memory, with the young people of today looking back over twenty years of abuse and honoring those who have struggled for justice. Bringing together past and present, memory and experience, the families are a bridge of memory and a focus of resistance. The conflict generation interprets the families' struggles in light of their own experiences. "Next year when you will see those mothers, sisters, kith and kin asking questions about their disappeared relatives in Pratap Park you won't find Mughli. She is dead. There won't be any one reciting poignant Kashmiri verses 'Ha Myani Dardilo Walo, Pyaran Chasai Ya Walo.' She has left an 'interminable mark' on all those who protest in the center of Srinagar for their disappeared loved ones. She would mourn for her son and of others, and with such dignity that her words had become the representation of 'collective grief' of all those who sit in to make others listen, ask questions about those who were the only source of income for their families, about those who were the only brothers of their sisters." She was widowed at an early age, ". . . for the sake of her only son, she turned down pleas of her parents to marry for the second time. At the age of 10 Nazeer had taken over the responsibility of the household. Working first as laborer at many places in city and simultaneously studying to become a teacher, the profession he loved the most."⁴

With no one else to turn to, the bond between mother and son was a strong one, as she raised him alone without any help from her own family or her husband's. In return for her loving care, Nazir Ahmed worked hard to qualify as a teacher, bringing home his wages to make a comfortable home. The day of his disappearance, she set out his tea and evening meal as usual and waited. And waited. When he was over two hours late, she went out to look for him, but no one knew of his whereabouts. The next morning she went to the school, to the police station, to the television station, the radio station, the press. Her search never ended.

After his disappearance, she would leave the house every morning to search for him. At every meal, she would set a place for him, for he might return. She met Parveena, as she said, "On the road," outside the courts where the relatives of the missing went with pictures of their beloved lost ones, to ask—soldiers, police, prisoners, lawyers—if they had any news of them. She became the core of the APDP family, holding firm to her quest and giving others the courage to do so. Her life became focused on a single goal, to find out the truth about her missing son. The last APDP demonstration she attended was a few months before her death. Parveena Ahangar recalls: "She told the story of her missing son one more time, and she wept and wept. We wept along with her. She never came again to the protests." Before she died, she asked Parveena for a promise that she would never give up looking for Mugli's son. APDP as her surrogate family continues the search.

Bakhti Begum and the Family of Manzoor Ahmad Wani

Manzoor Ahmad Wani was a young bus driver, who had been married only for a few months, when he was taken away by Major Bhattacharya of the 28th Battalion of the Rashtriya Rifles and two gunmen, who have been identified as local Ikhwanis. That evening in December 2001 he and his wife were on their way home, on the road that runs through the apricot orchards of Kupwara. His wife was at that time seven months pregnant. The hills, meadows, forest hamlets, orchards and streams would have made an idyllic scene, but

for the armed and camouflaged soldiers constantly patrolling the highway, the 28 RR camp sits on top of a hill overlooking the land for miles around. The bus was flagged down by an army convoy stopped on the road. Manzoor was beaten, and dragged bleeding and helpless into the waiting trucks. Leaving the young woman alone in the gathering dark the convoy drove off. Despite the horror of the scene and the danger to herself, all she could think of was to follow them to see where they were taking her husband. She ran after the trucks as far as she could, but was soon left behind.

The men in the family went to the army camp as soon as they heard of Manzoor's arrest. At first, Major Bhattacharya was avuncular, telling them that Manzoor would soon be released, that they should not worry, they should bring him warm clothes. Then, abruptly, a few weeks later, he changed both his story and his attitude, and denied that Manzoor Ahmad had ever been arrested, or held at that camp. On 15 August, 2002, the older brother went to the 28 RR camp to ask Major Bhattacharya for news of his brother, since it was an important holiday. He found Major Bhattacharya at the flag-raising ceremony and approached him. The Major put an arm around his shoulder and said, "I will give you news of your brother." He then took him aside and said: "M_____, if you aren't out of my sight in two minutes, I will shoot you here and now." The brother ran. When the family persisted, increasingly desperate, in filing a case with the police, the Major sent a message to the older brother to meet him at dawn on a deserted hilltop nearby. On the lonely hilltop, he found the Major accompanied by some of his men; fearful for his life, yet desperately seeking news of his brother, he approached the soldiers. One of the soldiers told him, "Run, he means to kill you."

The family was warned not to go to the police, but did so anyway, and filed a complaint with the Police Station at Sopur (Sopore). The arrest and subsequent disappearance in custody were investigated and admitted by Senior Superintendent of Police (SSP) Varmul and affirmed by the High Court of Jammu and Kashmir at Srinagar (HCP No. 56/2206 Mst., Bakuti versus State and others). The case was also reported to the State Human Rights Commission, which has asked the Government of India

to take speedy action to bring not only the Ikhwanis but also the Indian army major to the courts to face justice.

The Ikhwanis are counterinsurgency militants or death squads, trained, armed, and supported by the Indian army. They are also variously known as “renegades,” Special Task Force (STF), SOG (Special Operations Group). The use of local mercenaries as counterinsurgency fighters is a classic dirty war tactic: when the uniformed armed forces acquire a bad reputation for human rights abuses and atrocities, as did the Indian forces in Kashmir in the early-to-mid 1990s, the solution was to recruit and arm unofficial militant outfits who continue to terrorize the local population. One of the accused, Abdul Qayoom Tantray, was a dreaded Ikhwani, and the entire district lived in fear of him. They were able to breathe only after his arrest. Even under arrest, he continues to threaten the family.

Family members of Manzoor Ahmad Wani have faced threats and violence from army and Ikhwanis for taking the case to the courts; his brother and nephew have been arrested several times and tortured in the RR 28 camp at Tragpora, distt. Baramulla. The Ikhwani Abdul Qayoom Tantray, too, though in custody, has threatened to wipe out the family—since he was supported by the army, and owns a great deal of property, the threats are credible. Further, his associate, Ghulam Ahmad Malik, alias Jehangir, though identified as one of the perpetrators, was released and remains at large. The case against Major Bhattacharya is currently awaiting permission from the Home Ministry in Delhi to proceed with the prosecution, since under the Armed Forces (Special Powers) Act, in force in Jammu and Kashmir state since 1990, army personnel cannot be prosecuted without permission from the central government.

The State Human Rights Commission, a limited body with no executive power, recognized the offense and tried to push the Indian government and army to bring the accused perpetrators to justice. In March 2006, the SHRC Chairman A. M. Mir, in a letter to the Director General of Police said that “The position revealed by the police report is alarming and this commission views the same with concern. I would like a copy of this order be sent to the Defense Secretary GoI [Government of India] for taking speedy action in holding an enquiry

and also directing the concerned Army officer to produce the two Ikhwanis before SSP Baramulla and appear himself also." The letter also makes clear the close relationship between the army and Ikhwanis. After Manzoor Ahmed Wani was arrested by Major Bhattacharya of the 28th Rashtriya Rifles, he was "... handed over two Ikhwanis namely Abdul Qayoom Tantray and Ghulam Muhammed Malik who are working with 28RR. The man was taken to nearby Army camp where from he was never released not are his whereabouts known" (reported in *Greater Kashmir*, March 25, 2006). The letter also makes clear the helplessness of the local police when the army refused to cooperate in the investigation. Despite the court case and SHRC intervention, there is no information about the disappearance of Manzoor Ahmad Wani or of his fate.

The disappearance of Manzoor Ahmed Wani was the first case submitted on behalf of APDP to the Working Group on Enforced and Involuntary Disappearances at the United Nations High Commission on Human Rights in Geneva. The Indian government's response to the UNWGEID underlines the limitations of the UN human rights monitoring system, particularly as it applies to Kashmir. It is worth reproducing here in full, for its brevity and arrogance. These speak of the confidence with which such abuse is carried out: "The aforementioned case is presently sub judice at the High Court of Jammu and Kashmir. The security forces involved—28 Rashtriya Rifles—has been redeployed since February 2005 to another area and the allegations of harassment of family members of the victims are unfounded." The family continues to pursue the case against the perpetrators in court, and lives in danger.

Jana

On the APDP membership form, his information is given as below:

Name: Mansoor Ahmed Kachkar (Jan Sahab)

Date of birth/age—1975; 16 years of age at the time of disappearance

Address—Urdu Bazar, Fateh Kadal, Sgr

Date of disappearance—14 November 1991

Place—from his home in the midst of the night (crackdown)

Force BSF 75 Bn Karan Nagar—the officer-in-charge went by the surname of Ganguly

Action taken—in 1992 before the High Court Srinagar and NHRC

Other steps—in and around the jails of the state, Tihar Jail, Kathua Jail, Kot Balwal 2, Udhampur jail

His father's story: "We called him by the name of Jana—now I will tell you a very strange thing—we had a parrot, a family pet, who was very attached to my son, who was the youngest child—when he came home from school, the parrot would call out to him, 'Jana, Jana'—after they took my son away in the middle of the night, the parrot stopped eating. We gave him all his favorite foods but he would only shake his head from side to side and call 'Jana, Jana'—that was all, no food, he would just call 'Jana, Jana'—after the third day, he could no longer speak, but still refused food—on the seventh day after they took my son, the parrot died.

"My son was sixteen years old, and a high school student. I looked for him in every army camp, in every jail in the state. I went to the jail in Jammu—do you know it—on top of a hill and it takes a whole day to get there (Kot Balwal). I went to all the jails in the Indian cities (where they held Kashmiri prisoners)—I went to Udhampur, and to your Jodhpur and your Gwalior, and to your Tihar jail in Delhi. Everywhere I took a photo of my son and gave them his description and they said, he's not here, we haven't seen him. There was no trace of him. . . . Then I came back to Srinagar and tried to get inside the camps.

"For six months I sat outside the big army camp at Rawalpura. It was the height of winter and I would just sit there—here in Kashmir we have a "phiran," you know what it is? I just sat there against the wall facing the camp, on the freezing ground with my hands inside my phiran (phiran is a cape-like outer garment typically worn by Kashmiris)—for six months I sat there like a beggar. I never spoke or moved, just sat there while the daylight lasted. Then a senior officer in the camp—he saw me every day, sitting outside the camp—he called me called me inside to talk to him and I went. He told me he had seen me sitting there, and

asked me my story. I told him I was looking for my son. He said he would try and help me, to come back in a week's time—but a week later he had no answer for me—there was no news of my son—I believe that he really wanted to help me, and that he did his best—on his desk there were 7 or 8 phones, connecting to all the army camps and interrogation centres, Cargo, Papa I, Papa II, all of them—but even he could not find any news of my son.

"I put all my money, all my life, into searching for my son—I was one of the first to join up with Parveena—I heard at the courts that she was looking for her son, and we have gone to all the meetings and demonstrations together—I have lost the sight of my eyes—I can no longer see in the evening dusk—I have to feel my way along the walls, like a blind man—even inside the house I can only feel my way around, I can no longer see."

In the end, prayers and dreams are the only guidance for many. One conversation with a young half-widow, as the wives of disappeared men are called:

"Do you think he will return?"

She shakes her head, no: "I know that he is no more. I saw him in a dream. He said to me, "Take care of yourself. I will not come back."

A question that often rises in the narration of the stories of disappearances, is of selection. How, from the hundreds of families and cases, to choose which ones to include in an article, a conference presentation, this book? This has been a difficult question to answer, and one that I have struggled with, justifying choices sometimes in terms of representativeness, of choosing cases that illustrate some particular aspect of the pattern, while emphasizing that, as in so many other conflict situations, the roster of military crimes will never be complete. And yet, there are the people and their stories of a long struggle against impossible odds that demand to be told. One such is that of Bilal Ahmad Sheikh, son of Ali Mohammed Sheikh, resident of Gangbuh, Srinagar. Bilal, like Parveena's son, was a high school student when he was taken away by the 20 Grenadiers, 19th Battalion, of the Indian army in 1997. He was walking to work near the bypass when he and another boy were taken away, in front of witnesses.

I met the family in their neighborhood, during the rising of 2010, when the whole city was under curfew and the paramilitaries were shooting unarmed demonstrators, most of them teenagers and young men. We walked to the family home through winding streets bordered by willows edging the quick-running stream, and they brought out their collection of case documents: IDs, court notices, police report, a letter dated 7-6-97 from the District Magistrate Mr. Sandeep Nayar to Brigadier A. Kapur of the 56 Mountain Brigade deployed in the area, asking for Ali Mohammed Sheikh's son to be released and for the army to cooperate with the search for the missing boys. It was an act of trust for them to show me the papers; like other APDP families, they had suffered over the years through trusting lawyers and human rights advocates who promised to help them but took no action, using their stories of suffering to build their reputations instead. In many cases, the families never recovered their documents. Once APDP was able to find and provide good legal support and advice, the lawyer cautioned the families in workshop after workshop not to share their case details with anyone. Yet we sat in their living room, the father and mother taking turns to show and explain the documents and the case in the hope that this stranger might help them find news of their son. It was impossible not to include their story.

Law and Justice

As it turned out, their story was part of the pattern of lawlessness and impunity with which the armed forces operated. Attorney Ashok Agrवाल had encountered this particular unit in the course of his research into disappearances: "When I began to research the 20th Grenadiers, it became clear that the disappearance of Bilal Ahmed Sheikh, far from being a random event, was part of a pattern. . . . Between 29 March 97 and 23 May 97, the 20 Grenadiers, part of an elite regiment of the Indian Army, arrested at least fifteen persons. There is evidence to show that the police were aware of these arrests by the 20 Grenadiers and had repeatedly enquired about the whereabouts of the arrested persons from the various Army Commands stationed in the valley. One

such letter of enquiry was written by the office of the Inspector General Police, Kashmir to the GOC, 8 Mountain Division on 19 May 1997. . . . All the arrestees about whom we have information were between sixteen and twenty eight years, with the exception of forty five year old Shahban Khan" (Agrwaal 2007, 5-6). His survey of ninety habeas petitions filed in Srinagar before the Jammu and Kashmir High Court revealed "a failure of justice of epic proportions." The 20th Grenadiers operated with complete impunity from police and judicial oversight. Those arrested were teenagers and young men. The army ignored and blocked all efforts by police, administration and the courts to trace the whereabouts of the missing.

As we saw in the case of the disappearance of Parveena's son, the police refrained from any action which might implicate the armed forces. In cases where the police took action, these were blocked or disregarded by the army. If the cases made it to court, the army was able to disregard court orders. "Next, is the decision to disconnect the normal law enforcement machinery, qua the operations of the armed forces. In almost none of the cases studied did the police make any real attempt to investigate complaints against the security forces. Most survivor families stated that the police refused to register complaints about their family member's arrest/ abduction. The police claimed that they were under instructions not to register cases against the security forces. Even when they did register the case, the police made very little attempt to investigate the complaint or, to book the culprits. The courts were of no help. In several cases it was reported to us that the police explicitly said that irrespective of what the courts might say, their instructions were very clear: they were not to investigate or take any action on complaints against security forces" (Agrwaal 2007: 3).

The cornerstone of this system of military impunity is the Armed Forces (Special Powers) Act.⁵ The law allows for the use of lethal force ". . . for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area . . ."

and provides immunity from prosecution to military personnel accused of human rights violations. AFSPA was first enacted by the Indian Parliament in 1958. It was based on the Armed Forces (Special Powers) Ordinance of 1942 used by the British colonial government to suppress the Quit India movement. The provisions and language were copied nearly verbatim, giving the newly independent nation the military powers invoked by a colonial government at the height of political repression. By 1980, AFSPA covered all seven north-eastern states, where it is still in force, and Punjab.⁶ In 1990, it was promulgated in Kashmir.

The history of the AFSPA offers a unique window on the relations of the post-Independence Indian state with the borderlands. This history is rarely told since the law hardly impacts ordinary life in “mainland” India. It is in the borderlands that it controls every facet of life. This account by Manipuri human rights activist Babloo Loitongbam makes it clear that AFSPA was created and used to deal with political dissent from the ultimate cultural “others”—the ethnic, religious, and linguistic minorities in the northeast and Kashmir: “It was September 11, 1957 when the Home Minister of this country introduced a Bill—the Armed Forces Special Powers Bill—to deal with what he called the hostile Nagas indulging in dacoity, robbery and arson and which gives the military forces of this country a blank cheque to do what they want. This was an exception to the rule of a democratic, sovereign, socialist republic and implemented to deal with a dissenting voice. This involved a very small section of society in the remotest corner of the country, on the border with Burma. It did not prick the conscience of the people. It took the Parliament about half an hour to make a decision on this: to give blank cheque to the military to kill as many Nagas as possible. There were some dissenting voices in the Parliament, particularly from Manipur, who tried to make sense in the Parliament saying that this is martial law in a different form. . . . But their voices were drowned out, and the Armed Forces Special Powers Act was passed” (Human Rights Law Network 2009: 370–371).

A model of dealing with dissent through military force was now in place, and its application expanded over the years: “The

first experiment came with the Nagas in the 1950s—the whole of the Naga hills were devastated. In the 1960s the present state of Mizoram came into the flames. This was the only place in the country (in which) the Indian Air Force aerially bombed villages in a brutal display of force. The 1970s came: Tripura, Manipur. The 1980s came: Assam Valley and we see the whole Northeast burning in these last decades. And this exception is increasing: the whole Northeast was an exception. Punjab became an exception in 1983, where a similar act was promulgated but it was never used (it was more the police than the army). Jammu and Kashmir became an exception when the problems started in the 1990s. And now we are facing the situation here 21 out of 28 states in this country are facing some sort of armed resistance" (Human Rights Law Network 2009: 371). The state of military rule with exceptional powers has been expanding over the decades, bringing more areas and populations under its control. These now include Kashmir and the northeast, Punjab; and the model of using armed force to suppress dissent is now imported into the tribal belt that stretches across central India to deal with peasant insurgencies that are the outcome of decades of exploitation.

Other laws like the Public Safety Act (PSA), Disturbed Areas Act, National Security Act, and even the defunct TADA and POTA are used to perpetuate what have been called "revolving door detentions," holding detainees for year after year without framing charges or bringing them before a judge. In such situations, the potential for violence on the (bodies) of the detainees is fully realized, with thousands of documented cases of torture and extrajudicial executions. Overall, they present a pattern of *de jure* and *de facto* impunity and the denial of the basic human rights to life and liberty.

Building on the relationships forged after Parveena's visit to the OHCHR in Geneva in 2008, APDP hosted and organized the visit of the UN Special Rapporteur on extrajudicial executions, Christof Heyns, to Kashmir in April 2012. APDP's success in issuing a legal challenge to the regime of unchecked violence for the first time in over a decade has made them a rallying point for other victims. Many of these were present at the meetings with the UN Special Rapporteur, among them the family of

human rights lawyer Jalil Andrabi, who was abducted, tortured and murdered by the army in 1996; Masooda Parveen, whose husband was arrested and tortured to death in army custody, his broken body left lying on his doorstep. She took her search for justice all the way to the Indian Supreme Court, which ruled in 2002 that in Kashmir the army has the right to kill on suspicion; Shakeel Ahangar of Shopian, whose wife and sister were raped and murdered, their bodies found in shallow water within the security perimeter of the army camp near their home; the father of Tufail Ahmed Mattoo, a teenager who was shot dead as he walked home from after-school tuition in 2010; and the families of the five young men who were kidnapped and murdered by the army at Pathribal in 2000, their bodies displayed to the media as “foreign militants.”

In his report submitted to the Human Rights Council in April 2013, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions Christof Heyns wrote that: “In the Special Rapporteur’s view, the powers granted under AFSPA are in reality broader than that allowable under a state of emergency as the right to life may effectively be suspended under the Act and the safeguards applicable in a state of emergency are absent. Moreover, the widespread deployment of the military creates an environment in which the exception becomes the rule, and the use of lethal force is seen as the primary response to conflict. This situation is also difficult to reconcile in the long term with India’s insistence that it is not engaged in an internal armed conflict. The Special Rapporteur is therefore of the opinion that retaining a law such as AFSPA runs counter to the principles of democracy and human rights.”⁷

As the disappearances become the focus of attention, APDP notices a new trend. Their very success has led to a decrease in the number of disappearances, but there is no letup in the arrests. There are now fewer disappearances, and an increase in extrajudicial executions. Those arrested are now just killed outright. This appears to be new tactic used by the armed forces to avoid the prolonged scrutiny that a disappearance brings.

The pattern of military violence carried out with impunity has a counterpoint in the determination of the families to find out

the truth about their missing relatives and justice for the crimes committed against them. These contrasting claims to sovereign power echo two different theoretical understandings of sovereignty, seen on the one hand as absolute, unbounded power. This is exemplified in the case of Masooda Parveen (discussed in the next chapter), where the Indian Supreme Court upheld the absolute power of the Indian military in Kashmir and the right to kill on suspicion. On the other hand is the constitutional definition of sovereignty, where power is seen as legitimate only when it is limited, bound, accountable and equally applicable to all (Agrwaal 2007b). The Kashmiri claims for justice, accountability and ultimately, for these to be possible, for self-determination, are derived from this second version. The ramifications of this struggle are discussed in the final chapter, which argues that the families show that love is indeed strong as death.

The Right to Kill

Judicial review has reaffirmed rather than modified the reliance on military powers and military impunity over the years. In 1997, the Indian Supreme Court ruled that the Armed Forces (Special Powers) Act did not violate the Indian Constitution. Again in 2007, it upheld AFSPA and the right to kill on suspicion, in its ruling on the case of Masooda Parveen v. The Union of India. In May 2012 the Supreme Court yet again upheld the principle of military impunity in the Pathribal fake encounter case. As well as legal impunity, military and paramilitary personnel and police operate with *de facto* impunity, achieved through the obstruction of justice, delays and intimidation of survivors and families seeking justice.

Masooda Parveen v. Union of India

It is perhaps fitting that the ultimate affirmation of the right to kill and denial of the right to life should come in the form of a ruling by the Indian Supreme Court on a petition from a Kashmiri widow. Masooda Parveen is the widow of Ghulam Mohi-ud-din Regoo. Regoo was a Kashmiri businessman and advocate in the Jammu and Kashmir High Court. In 1998, he was arrested by the Indian army, tortured and killed in custody. His broken body was left at the front door of his house. Masooda Parveen's petition asked for compensation for the wrongful death of her husband.

Masooda Parveen's petition before the Supreme Court of India described his murder: "On February 1, 1998 some surrendered militants along with a unit of the Army (17 Jat) reached my home

in Chandhara at about 8.30 p.m. and searched the house but found nothing incriminating therein. But the army and government gunmen took my husband to the Lethapora Army Camp, the Headquarters of 17 Jat, and tortured him mercilessly leading to his death. Then explosives were tied to his body and detonated to camouflage the murder.”

The army’s response, also summarized in the Supreme Court judgement, is remarkable for its callousness. The best interpretation that can be put to their version of the events is that Regoo was used as a human shield: “On the basis of intelligence provided to the Battalion, a patrol party from the Lethapora Army Camp had searched Regoo’s house at about 8.30 p.m. on 2nd February, 1998. Thereafter he been taken to the camp and interrogated on which he revealed that he was a Pakistani trained militant . . . he had offered to lead a patrol to a hideout. A patrol was deputed to move to the hideout accompanied by Regoo. He stopped the patrol 50 meters short of the hideout. After ensuring that he was not in a position to escape, Regoo was released with a direction to go forward. When he tried to create an opening, an explosion resulted leading to his death at about 2.30 a.m. on 3rd February, 1998.”

In delivering its verdict, the Supreme Court began with a fine expression of Indian paternalism: “We cannot ignore the fact that many in Kashmir who have gone astray are Indian citizens and it is this situation which has led to this incident. We do appreciate that a fight against militancy is more a battle for the minds of such persons, than a victory by force of arms, which is pyrrhic and inevitably leads to no permanent solution. We cannot ignore that in this process some unfortunate incidents do occur which raise the ire of the civilian population, often exacerbating the situation, and the belief of being unfairly targeted in contrast of the law and order machinery that it is often in the dock and called upon to explain the steps they have taken in the course of what they rightly believe to be the nation’s fight. We however believe that the examination of a complaint, and the provision of an effective redressal mechanism preferably at the hands of the administration itself, or through a court of law if necessary, is perhaps one of the most important features of securing a psychological

advantage.” Further, “. . . in an investigation of this kind, based only on affidavits, with a helpless and destitute widow on one side and the might of the state on the other, the search for the truth is decidedly unequal and the court must therefore tilt just a little in favour of the victims.”

Having proclaimed the need to “tilt just a little in favour of the victims,” the Court did so by finding that there was no need for the army to account for the death of Ghulam Mohi-ud-din Regoo in custody, that the army’s assertion that he was a militant (and a Pakistan Trained Militant or PTM, at that) did not require proof, and that the plaintiff had failed to establish Regoo’s innocence. Masooda’s petition was dismissed: “We have the army and police record pertaining to the incident which clearly shows that Regoo was indeed a militant and that the circumstances leading to his death were as put on record by the respondents. We thus find no merit in the petition. It is accordingly dismissed with order as to costs.” She filed a review petition but that too was dismissed. Ruling out civilian and judicial oversight of army operations in Kashmir, this judgement recognizes with remarkable candor that military force is essential to the maintenance of Indian control over Kashmir.¹ The affirmation of the right to kill upholds the claim of total power, unhindered by legal, constitutional or moral principle or law. The Supreme Court judgement clearly expressed and upheld this right, giving the army absolute power.

Against the claim to absolute power over life and death is set the moral voice of the victims’ families for justice. Masooda Parveen has been one of those voices. Her reflections on her long struggle against army impunity and on the Indian juridical system form a statement whose historic importance will become clearer over time: “I wanted justice for my husband, for the way he had been brutalized by the armed forces. They tortured and killed him, but they didn’t stop there. They mutilated his face and cut off his legs. What had we ever done to them? I was all alone, there was no light, I had no support. Finally someone who had a connection to the Supreme Court of India suggested that we should take the case to there. We thought the Jammu and Kashmir High Court in Srinagar has been made completely ineffective, but we can look to the Supreme Court for justice. My petition was rejected twice

before the Supreme Court agreed to review it. We had hoped for justice from the highest court in India but that proved to be a false hope. When the Supreme Court delivered its judgement in 2007, I was shattered. Believing that India's highest court would give me justice was my biggest mistake. Kashmiris are not considered Indian citizens, we do not have the right to expect justice when crimes are committed against us."

*Quick, by the pomegranate-
the bird will say-Humankind can bear
everything. No need to stop the ear
to stories rumoured in branches.²*

The long battle for justice was also a lonely one. Once she decided to take her case to the Supreme Court, her own family and in-laws backed away from supporting her, fearing retaliation. The children were turned away from their schools. She made the long dangerous journeys to Delhi alone. Despite all the hardships, she raised her children single-handed, successfully. The eldest, Farkhand Mohiuddin is now a doctor and the younger son has a scholarship to attend medical school in London. Dr. Farkhand recalls that at the time his father was murdered by the army, he was too young to understand what was happening. He was playing cricket with friends and couldn't realize the significance of the events. Soon, however, it became apparent that something big had happened. The attitudes of family members and schools brought home this realization. Of his parents and his mother's long struggle he says: "He was a lawyer and she was a teacher. We didn't ask for this to happen to us. It was forced on us, we were pushed into this, thrown in the deep end. We were not prepared for this. . . . She thought, maybe I will get justice from India; the Jammu and Kashmir High Court is controlled by the army, and there is so much politics and corruption. So she took her petition to the highest court in India. The judgement of the Supreme Court shows that for India, justice and Kashmiris are poles apart. We are not treated as Indians, we are not even treated as slaves. Even slaves have some rights. We Kashmiris have no rights at all."

Masooda Parveen reflects on the outcome: “After this judgement, how does India to claim me as its citizen? By what right?” She is haunted by the memory of her husband’s death. “What did he ever do to them? They killed him, then they mutilated his body.” She recognizes that her struggle for justice is also fought for the many others who have suffered as much or even more than she has, but are forced to remain silent and helpless. She took her fight to the Supreme Court to show that Kashmiri women are not so weak and helpless. Now she identifies as Kashmiri, not Indian. She has faced many problems and obstructions, but will not give up. Echoing a universal sentiment among the victims and survivors of Indian army violence, she will fight for justice till the end of her life. Her courage and moral vision make her a powerful voice for justice, which will have to be heeded both in India and the world if the idea of universal human rights is to have a meaningful future. In September 2012, she was the APDP delegate to the biennial conference hosted by Frontline Defenders in Dublin.³

Pathribal

In May 2012 the Supreme Court again upheld the principle of military impunity in the Pathribal fake encounter case. “Encounter” and “fake encounter” are terms from the coded lexicon of Indian counterinsurgency and policing, denoting extrajudicial killings (Human Rights Council 2013; Human Rights Law Network 2009; South Asia Human Rights Documentation Centre (SAHRDC) 2003; Sethi 2014), often staged as a fake shootout between security forces and purported militants.⁴ On March 20, 2000, 35 Sikhs were massacred in Chat-tisinghpura in south Kashmir by armed militants. A unit of the counterinsurgency force 7th Rashtriya Rifles was stationed near the village but took no action to stop the killings or to catch the perpetrators. The killings coincided with U.S. President Clinton’s visit to India, bringing international media attention and a war of words between India and Pakistan, each side blaming the other for the massacre. This was the first time that Sikhs

had been targeted in the violence; unlike Kashmiri Hindus who left en masse at the start of the insurgency, they had felt safe in Kashmir. Five days later, five young men from the village of Pathribal in Anantnag district were killed by the military, which claimed they were “foreign militants” responsible for the massacre. They were buried and the officers in charge commended. Protests in the Anantnag area of south Kashmir brought to light the fact that the military had abducted 17 men from the area in the course of the search for the militants responsible for the massacre; and that those killed were not militants but local farmers. On April 3, security forces opened fire on a group of protestors at Barakpora, killing eight, including the son of one of the missing persons. The protests led to an investigation and the exhumation of the bodies, which were identified as civilians. After allegations of contamination of the DNA evidence, the inquiry was handed over to the CBI (Central Bureau of Investigation) in 2003, which submitted its report in 2006. On the basis of the report, the CBI filed charges against five army officers belonging to the 7th Rashtriya Rifles, “. . . for hatching criminal conspiracy (120-B RPC), kidnapping with intention to murder (364), attempt to murder (307), murder (302), culpable homicide by causing death of a person other than person whose death was intended (301) and destroying the evidence (201).”⁵ The army’s response was to invoke the impunity granted its officers by AFSPA. The matter went before the Supreme Court, which in May 2012 gave the army the choice of surrendering the officers to face trial in a civilian court or to institute a court-martial. After much delay, the army chose the latter option.⁶ Amnesty International noted that “. . . by giving the first option to the army for a court martial, this ruling reinforces immunity from prosecution in other cases of alleged extra-judicial killings in Jammu and Kashmir . . . Instead of upholding the universal and constitutional right to life, the Supreme Court chose to rely on emergency laws which provide excessive powers, as well as impunity, to the army.”⁷

The court-martial opened in Jammu in September 2012, far from the village, making it difficult for civilian witnesses called

to testify before the court-martial for a number of reasons—fear of the military, inability to travel to the court due to old age and ill health, and language issues. Under pressure, the venue of the court was shifted to Awantipora in Kashmir, but the fear and confusion made it impossible for the testimonies to be recorded.⁸ Warisha Farasat notes “. . . court martial proceedings have been systematically used to ensure that there is no accountability of the Indian security forces. Examining this pattern of injustice in Kashmir, even the word impunity is inadequate since there is a deliberate plan and policy to shield the Indian security forces personnel involved in serious human rights abuses. The procedure for gaining sanction for prosecutions is so long drawn out that it is impossible to gain permission.”⁹ Under AFSPA, military personnel cannot be prosecuted without permission sanctioned by the central government in Delhi. There is no recorded case of such permission being granted since the beginning of the conflict. Responding to Right to Information (RTI) applications filed by a Kashmiri NGO, the Jammu and Kashmir Home Department’s reply states that “. . . no sanction for prosecution has been intimated by the Ministry of Home Affairs and Ministry of Defense to the State Government from 1990-2011 under the J&K Armed Forces Special Powers Act.”¹⁰

Extrajudicial Executions: *De Facto* Impunity

Apart from the legal impunity granted by the national security laws, the massive military presence overshadows and overrules the civilian administration, giving military and police personnel *de facto* impunity as well. This allows military and police personnel as well as the civil administration to simply disregard court orders, leaving cases and criminal investigations pending for years and even decades. The pattern of impunity and deliberate obstruction of justice has remained in place over the years. In cases where legal impunity is not applicable (where the accused perpetrators are associated with the police rather than military), or is not invoked for political reasons, intimidation of victims,

survivors, and human defenders, and delays lasting over decades effectively block the course of justice.¹¹

These strategies for evading justice are seen in the case of Tufail Ahmed Mattoo, a seventeen-year-old student who was killed on 11 June 2010, when he was struck by a tear-gas shell fired by police at close range.¹² He was not part of the demonstration nearby (against the killing of three teenagers in Machil in north Kashmir); he just happened to be passing by on his way home from after-school tuitions. The police first refused to record the killing by filing an FIR (First Incident Report), doing so more than a month later, on being ordered to do so by the court.¹³ In December 2010, the High Court in Srinagar ordered the police to form a Special Investigation Team (SIT) for the case. Though an eyewitness identified one of the policemen who fired the shells in an identification parade, the police tried to confuse his identity.¹⁴ The police argument in court claimed that the tear gas shells were labelled as “non-lethal” by the ordinance factory where they were produced and thus could not have caused the death. Since the cause of death was the firing of shells at close range, the court ruled this argument irrelevant; but in December 2012, the SIT closed its investigation on the grounds that it was unable to trace evidence.¹⁵ On 14 February, 2014, the Jammu and Kashmir High Court ordered the police to reopen their investigation into the case.

The killing of Tufail Ahmed Mattoo became the trigger for a popular uprising against Indian rule, with mass protests recalling the early 1990s, with tens of thousands of protestors across Kashmir demanding freedom. The Indian response to the protests also recalled the early massacres, as police and paramilitary troops opened fire, killing 121 and injuring hundreds. Among those killed and wounded, the majority were teenagers and in their early twenties.

In December 2011, Mohammed Ashraf Mattoo, Tufail’s father, told reporters that due to threats and intimidation by security forces and intelligence agencies, he was trying to seek political asylum outside India. He visited several embassies in Delhi but was turned away. The threats intensified after he met visiting

human rights advocates from India: "Various people belonging to security agencies come in civvies and threaten us of dire consequences . . . I am really scared. So I am forced to approach various embassies and seek asylum somewhere outside India . . . There is no choice, but to flee. . . The only thing they want me to do is to stop talking about the killing of my son. They also coerce me to drop the case of my son and take compensation. . . . You tell me can a father fix price for the corpse of his son. He was priceless. The emotional scars are deeply engraved on my heart, on his mothers also. What I want is justice."¹⁶

A press note prepared by Mr. Ashraf Matoo on the third anniversary of his son's murder by the police speaks eloquently of the family's tragedy, the obstructions to the pursuit of justice, and the human rights crisis represented by the killing. It is quoted in full here:

Press Appraisal

In memory/reminder to the government for justice.

Shaheed Tufail Ashraf Mattoo who was targeted and killed by Jammu and Kashmir police personnel intentionally when he was returning home after attending tuition classes on 11th June 2010. The police personal fired a tear gas shell on his head. The fired shell shattered his skull and killed him instantaneously.

Brain fragments were found scattered at the spot. He was 17 year old and was studying in class 12th. At the time of his killing, he had the school bag strapped on his shoulder and had a five rupee coin in his hand.

Immediately after his killing, police issued a contradictory statement saying that Tufail was killed after he was hit by a stone. Referring to the initial police report as per medical examination of the wound of the victim the case appears to be of a deliberate murder. Police is on a look out for two persons who dropped the deceased at the SMHS hospital in a Maruti car, and disappeared from the scene. The statement was retracted when Tufail's Autopsy Report confirmed that he was killed by a tear gas shell which damaged his brain and skull, belying the police claim that it was a case of 'mysterious death'. Initially police even refused to file an FIR and it was only after 36 days on the directions of court

that the FIR was registered by the police and investigations were started in the case under murder charges. There are some good and bad police officers/personnels in the police department. The state government assigned investigation of cold blooded murder cases to those officers/personnel's who got political affiliations with the ruling parties. They violate the rules and regulations of the respected department. They are more concerned with executing the manifesto of afflicted parties which makes them to follow the directions of the party leaders in submitting malice, biased report to the judiciary regarding the cases which they are allowed to handle. It works as hurdle/obstacle/wastage of precious time of the respected judiciary and that of the victims. So in the process, the victims get further victimized by delaying of justice. We live in agony day-in and day-out. We got confused in the past that is why it took more than a month for the police to register an FIR, why then it took them more than one month? Was it to cook the story and save the culprits including shielders, masterminds, to save the main stream ruling parties? The ruling parties incompetence which costs state exchequer huge amount of money, property and most importantly many innocent lives of teen agers. The atmosphere created by the ruling authority has developed various ailments in the society mostly women, children, and old aged persons who are suffering with various kinds of diseases. The police personnel's are doing all this for Petty privileges like promotions, rewards and awards because they want to please their ruling parties.

It is incredible to note that when police has anything against the people they act quickly, when it comes against them they don't act as they should act. When they fail in getting their hands on known/unknown killers they put forward 'killers as untraced' which they used as escape route. So therefore the 'LAW MAKERS ARE LAW BREAKERS'.

The woman, who is sole 'official eye witness' of the above case narrates the heart wrenching incident of Tufail's killing as "it was 11th June, a Friday there was a loud bang", she says. The boom that sounded like that of a grenade explosion 'was actually sound of a tear gas shell being fired'. She says that movements before hearing the explosion, 'I saw three boys running towards the Gani Memorial from Syed Sahib Shrine, One of them was Tufail. He was being closely chased by the policemen. Tufail entered the

gate of the stadium but could not go too far as he slipped on the mud. Two Jammu and Kashmir police officers then came out of the gypsy and followed him to the ground,” she says. They were hurdling abuses at him in Kashmiri, saying ‘we will not leave you’. “The officers aimed at Tufail from close range and fired a tear gas shell straight at him. The officers went near his body, she claims. “I managed to catch hold of arm of the officer who had fired at Tufail and started slapping his face. But another officer who had ordered the former to shoot, pushed me to ground and freed him from my hold. They escaped in the same white coloured gypsy they had arrived in”, she says. “the tear gas shell scattered Tufail’s skull and killed him instantly”, she says.” On seeing Tufail dead, I Lost my nerves and put off my dupatta, tied it on my hand and wave it over, for grabbing the attention of the people. Then I repeatedly called out: ‘O people, please come out of your homes an innocent boy has been martyred’. . .”, she says. “he had a school bag strapped on. His left hand had clutched grass from the mud beneath, which he had uprooted in his death throes. In his right hand, a five rupee coin was found”, she adds.

Tufail’s brutal and gruesome killing evoked strong condemnation from all circles of the society. His killing sparked-off the cycle of violence in Kashmir in 2010, people went out on roads to seek justice for innocent killings and defending humanity but instead they got sprayed with bullets etc by the authorities which destroyed ethics of humanity, in which more than 125 innocent people were killed (mostly teen agers), around 10000 were injured and 5000 arrested by the state. Year 2010 was marked as the worst forms of state sponsored terrorism in Kashmir whose bitter memories refuse to fade away from our minds. Kashmir was shut for more than six months due to the killings, curfews and strikes.

The government of Jammu and Kashmir on 27th July 2010 as a mere eye wash had ordered and setup a two member judicial commission of enquiry (CoI) headed by chairman state human right commission (SHRC) of J&K to probe the 17 out of 125 civilian killings. As per Justice (Retd) Bashir-udin who was heading the commission to probe into the killings and had reached an advanced stage and is now held-up to the pending writ petition filed by the CRPF in the state high court seeking orders to quash the notification under which the state government ordered

judicial probe into the 17 civilian killings in 2010. As a result of which the court has directed the commission not to submit the final report without its permission. The terms of reference of the commission include inquiring into the circumstances leading to death by firing or otherwise into the 17 incidents, fixing responsibility where-ever excessive force was used resulting fatalities, suggests majors to stop such incidents in future and recommended punishment to those found guilty.

We are law abiding citizens of the country, we follow the dictates of the law. Is it not a crime to shield the killers of our innocent people and their masterminds behind undemocratic acts of violence? If law will not take its course of action, the society will fall in the hands of killers, gangsters, rapists, etc etc. which would not be the healthy sign for the state, country and its citizens. we will not even bother to hesitate from sacrificing our lives to seek justice for the victim families, "we are defending laws, we are not breaking laws."

In September 2011 The State High Court directed the Director General of Police (DGP), J&K to constitute a new special Investigation team(SIT) headed by a police officer not below the rank of SP to investigate the case after counsel for the petitioner pleaded before the court that the investigation carried out by the earlier SIT was not satisfactory. The court while expressing displeasure over the tardy investigation had observed that despite more than one year having left since the incident, the investigation of the case was not brought to its logical conclusion within reasonable time and the court was constrained to direct constitution of a new SIT.

We feel that the opportunity lies at the door of the government to give justice to the victim families, so that it would send positive signals to the people of the state that government means business seriously. People know what is wrong and what is right they are visionary, intelligent, brave and bold.

Despite almost three years having passed, no one has been put on trial for killing Tufail. While the police is trying its best to shield their men involved in this killing, besides surprisingly there is no response from the Human Right Organization, especially the Global Human Rights watch dogs like Amnesty International and Human Right Watch. Police is misleading the court for the last three years by cooking up stories. State is acting in a slack Manner in the case to buy time and allow the accused

to go scot free and tamper the evidence without making them face the trail judiciously. The woman who is witness to the killing identified the killer in two separate identification parades but the government is yet to take any action as culprits were their own persons. Killers are moving freely and the family is being threatened to keep quiet and not to ask for justice. The closure report submitted by SIT in the court is biased, maligned etc. which had been rejected out rightly by us. The appeal and reply against that has been filed in the court. We are getting only dates and next hearings. If such would be the situation in coming proceedings then I might be able to put my humble request to honourable court to save us from wasting our precious time and that of the honourable court's precious time in giving us in writing that the justice is impossible to get in the atmosphere created by SIT in the court(status report) and perhaps the only way out remains is that Since the family lost all the hopes of getting through the existing institution and is compelled to make appeals to International human Rights Organization to take stock of prevailing situation in Kashmir.

Perpetrators of Human Right violation in the state need to be prosecuted before International criminal court and war tribunals framed under international law.

Where are the civil societies of India including renowned Parliamentarians who visited Kashmir during the turmoil and committed that they will work to provide justice and peace in valley, so we remind them what has been done by them on their part.

I am thankful and indebted to the people of the valley who stood behind me in the hour of crisis including neighbours and different communities and especially to the members of Bar Association of J&K who are pleading the cases of innocent people of Jammu and Kashmir, we highly appreciate their efforts. We will never ever let them down in our struggle for justice

I am also thankful to the media, press people who worked day and night in keeping people aware about the prevailing situation in the state in spite of facing hardships, harassments while conducting their professional duties especially during 2010 turmoil.

We all know that the local tv channels had laid no stone unturned to report all pros and cons of the state sponsored terror upon young boys during summer turmoil 2010. It turned to be one of the major setback on state administration which vide orders Dated 29th July 2010, banned the broadcasting of news

and political views in Srinagar which still continues. I wrote a number of letters to Amnesty International and Human Rights Watch about the killing of my son at the hand of state police but no response was received from them (it may be recalled media including internet facilities were also banned but now internet services are resumed but media is still under ban/restricted). It has pushed the people of J&K virtually in dark ages as the state media being run under agencies never reports the facts, related to the events, challenging the event of occupation. So we deem it our moral obligation to appeal to the international community to prevail upon the Government Of India to allow the free flow of information which is the fundamental right of every citizen of the world equally guaranteed by the constitution of India.

Before i conclude i submit a fervent appeal to internet users that they should carry forward our struggle by use of the internet and record their big NO to state sponsored terrorism, curbs on human liberties, persistant human right violations denial of justice system to the victims of state violence.

Thank You

Tahfuz-e-insani Haqooq committee Saida kadal Srinagar
through

Mohammad Ashraf Mattoo.

F/o : Shaheed Tufail Ashraf Mattoo.

Saida kadal Near Shaheed Tufail chowk Sgr

11th june 2013

Mohammed Ashraf Mattoo understands clearly what is at stake in his struggle for justice for his son: "I am defending the right of every citizen in a democracy to get justice." He argues that justice is a basic human right, and human rights are for all, regardless of their religion, race or language. Kashmiris are prevented from speaking out, from having any opinions, from protesting the killing of their children. Local Kashmiri television channels were banned in 2010 and the ban continues three years later. His words and experience make it clear that democracy cannot exist without justice and freedom of expression. "We strive and struggle for the future, so that the coming generations will be protected. What we have lost, we have lost. Those we have lost will not be coming back. We are against these criminal acts by the

police. We are not against the system. We are defending democracy and the rule of law.”

On the same day and in the same area, 11 June 2010, another schoolboy, thirteen-year-old Wamiq Farooq, was killed by the police in a similar manner, by firing a tear gas shell at his head at close quarters.

Shopian and After

The physical and psychic violence of counterinsurgency is written on bodies and space. The frequently used term “human rights violations” carries in itself a deeper truth, pointing to the violation of meaning, body and world. Rape and torture are individual as well as collective wounds. From the gendered violence of counterinsurgency, where men are tortured, killed, and disappeared, and women are raped, molested, humiliated and left alone to fend for their families and themselves, to the large-scale destruction of the environment, the state of siege is a total phenomenon. Yet these convergent forms of violence come to define not the triumph of military domination but the sites of resistance. Thus in 2008, the rape and murder of two young women in Shopian in central Kashmir became the focus of mass protests that returned the Kashmiri struggle for independence to its roots as a mass movement. And in 2009, the environmental destruction represented by a proposal to transfer land to outsiders¹ along an aggressively expanding Hindu nationalist pilgrimage at the shrine of Amarnath was challenged and stopped by popular protests. Deforestation due to timber smuggling, carried out with the tacit support of the army, produced devastating floods in Srinagar city in September 2014. Illustrating the consequences when government functions are concentrated, in classic colonial fashion, solely on repression and extraction, the vast military machine melted away, as did the state administration. It was left to the ordinary people to perform heroic acts of rescue, recovery and rehabilitation (Peer 2014). The lessons offered by this contrast reveal again the stark opposition between notions of

sovereignty based on unchecked power on the one hand and on a social compact hardly maintained on the other.

The contrasts apply to the situation of Kashmiris outside Kashmir as well. In an intensely personal account, Syed Bismillah Geelani (2006) documents case after case of discrimination, prejudice, police persecution, arrest on false charges, railroading and violence against Kashmiris living in Indian cities.² Reflecting on the responses of Delhi audiences to his book and related presentations, Geelani concluded that they were comfortable only with an image of the Kashmiris as helpless victims, deserving of pity and condolences. There was no space to speak of Kashmiris as political actors, strategizing and even winning a path to independence. His analysis points also to the strangely apolitical nature of the exposition of torture and social suffering in academic accounts, and of the medical model of a process where the torture victim moves through the stages of the breakdown of self, the creation of testimony, and rehabilitation through psychiatric intervention (Kelly 2011 makes a similar critique). These models do not apply to the political trajectory followed by Syed Abdul Rahman Geelani and many other Kashmiri torture survivors. He is the older brother of Syed Bismillah Geelani; along with three others, he was arrested and falsely accused of being a conspirator in the attack on the Indian parliament on 13 December 2001 (Roy et. al. 2013). Syed A. R. Geelani was detained, tortured, and sentenced to death by a special court; he was acquitted on appeal. Following his acquittal and release, he has devoted his life to supporting prisoners' rights within a political framework that recognizes the repression of ethnic minorities and vulnerable groups, like tribals and Dalits, as essential elements of Indian statecraft. Such analyses of the characteristic South Asian patterns of ethnic conflict also offer glimpses of the path to a just resolution of these conflicts.

Rape as a Strategy of State Terror

The systemic use of rape as a weapon of war was defined as a war crime and crime against humanity for the first time by the International Criminal Tribunals on Yugoslavia and Rwanda. The

Rome Statute of the International Criminal Court defines “Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” as a crime against humanity “when committed as part of a widespread or systematic attack directed against any civilian population.”³ In 2008, the UN Security Council deliberated on sexual violence in armed conflict and passed a resolution recognizing that “women and girls are particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instill fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group.”⁴ They noted that “rape and other forms of sexual violence can constitute war crimes, crimes against humanity or a constitutive act with respect to genocide.” Further, the resolution stresses the need for “the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes.” At the same time, as the former UN Special Rapporteur on Torture, Manfred Nowak, made clear in a 2008 report (Cherneva 2011; Human Rights Council 2008), rape and sexual violence are always torture and constitute a set of interlinked practices. It has been argued that these definitions give the prohibition on rape as a tool of war the status of *jus cogens*, i.e., peremptory law from which no derogation is permissible (Cherneva 2011).

Rape and sexual violence, carried out with impunity, have been an essential element of Indian military strategy in Kashmir and the northeast (Osuri 2013; Mathur 2012). A Kashmiri blogger recalls a series of incidents reported in 1990:

In September of that year, The Illustrated Weekly of India published a special report, ‘Protectors or Predators,’ chronicling several other cases that had taken place in a span of just 8 months (January-August). Among them: Three unmarried sisters from a well-respected family in Lal Bazar, a downtown area of Srinagar, were carried off to the cantonment and released after two nights of sexual assault. Young girls in scenic Trehgam village were dragged inside their homes alone and subjected to various forms of physical torture from blows with belts and rifle bulbs (sic) to electric shocks. Eighteen year old Mumtaz of Tangwara mohalla had the flesh of her left cheek gouged, her clothes stripped off

and it is uncertain whether she escaped rape for she has withdrawn into herself. Near Chokibal, another serene village in Kupwara, a couple was arrested and taken to an army camp where the husband was tied to a tree while his wife was raped by jawans. In Ballipora, a dozen women from neighbouring Pазipora were “raped by 9 or 10 men. One of them was pinned down in a field for as long as three hours, her blood-stained salwar later set on fire by the jawans.” In Kupwara town, after a crackdown, 26 year old Rabia was caught alone by three jawans who “snatched her baby out of her arms and knocked her to the ground with their rifle butts. They then gagged her with one of her own phirans, tore her kurta, and raped her. One of them even pressed his boot down on her child’s chest so that he could not cry out while they were unleashing their passion. This carried on for an hour, after which she fainted.”⁵

The pattern of abuse, cover-up, obstruction of justice and persecution of victims and their supporters, doctors and lawyers who produce evidence unfavorable to the state remains remarkably consistent over a period of twenty years: “The state has appropriated enough power to give full protection to the culprits in uniform overtly or covertly with all-out efforts made to hide facts and even tamper with evidence. The state police personnel, not covered under AFSPA, accused of rapes are already being shielded through methods like hushing up cases at the medical examination level, tampering evidence, delaying the basic documentation of the case, refusing to register cases, sending in state-sponsored teams or the highly influenced Central Bureau of Investigation to probe such cases” (Bhasin Jamwal 2013). In a press statement issued after her visit to India in April 2013, during which she met with human rights groups from Kashmir, the UN Special Rapporteur on Violence against Women, Rashida Manjoo, noted the consequences of the impunity provided by AFSPA: “The law protects the armed forces from effective prosecution in non-military courts for human rights violations committed against civilian women among others, and it allows for the overriding of due process rights. Furthermore, in testimonies received, it was clear that the interpretation and implementation of this act, is eroding fundamental rights and freedoms—including freedom of movement,

association and peaceful assembly, safety and security, dignity and bodily integrity rights, for women, in Jammu & Kashmir and in the North-Eastern States. Unfortunately in the interests of State security, peaceful and legitimate protests often elicit a military response, which is resulting in both a culture of fear and of resistance within these societies.”⁶ The impunity and protection offered to the rapists in uniform was upheld by the Indian parliament through legislation passed in February 2013 (Osuri 2013).

Two infamous cases eighteen years apart illustrate the patterns of impunity. Kunan and Poshpora are neighboring villages in the border district of Kupwara. On the night of 23 February 1991, soldiers of the elite 4th Rajputana Rifles surrounded the village for a cordon-and-search operation. Eyewitness accounts all agree that the men of the village were ordered out of their homes and held at gunpoint. The soldiers were drunk and as they went from house to house, the women trapped there were gang-raped. The victims’ ages ranged from twelve to eighty.⁷ Doctors who attended the victims found evidence of rape and physical injuries. Due to the military cordon closing off the entire district, the news reached the media only weeks later. Kupwara District Magistrate, S. M. Yasin and Divisional Commissioner Wajahat Habibullah both visited the village to investigate and asked for a full investigation. As the news was being reported in the international media, it could not be dismissed outright. However instead of a judicial inquiry or criminal investigation, the Indian government chose to send a two-member team from the Press Council of India to investigate the crime. The team did not even visit the village, much less talk to the victims. According to Kashmiri sources, they stopped at the BSF (Border Security Force, an Indian paramilitary) checkpoint controlling access to the village, and after conversation with the commanding officer there, produced the Verghese Commission report, which concluded that “The Kunan rape story on close examination turns out to be a massive hoax, orchestrated by militant groups and their sympathizers and mentors in Kashmir and abroad as part of a sustained and cleverly contrived strategy of psychological warfare and as an entry point for re-inscribing Kashmir on the international agenda as a human rights issue. The loose ends and

contradictions in the story expose a tissue of lies by many persons at many levels.”⁸ The Indian government, media and civil society have maintained for over twenty years that this report by two journalists is an adequate substitute for an impartial judicial inquiry.

But in Kashmir, the survivors did not give up. In its 2011–12 annual report the State Human Rights Commission sought to open an investigation into the Kunan Poshpora mass rape case, twenty years later. It also asked for the prosecution of the government officials who tried to cover up the incident: “From February 23, 1991 all the successive governments and district administration have been guilty of callous, negligent, insensitive and indifferent approach and attitude towards all these victims as if nothing had happened in Kunan Poshpora during the intervening night of 23 February 1991.”⁹ To date, the government has not submitted any report in response to the SHRC demand.

Twenty-two years later, the culture of impunity and fear is still manifest in the unfolding of the Shopian rape case. The abduction, rape, and murder on Friday 29 May 2009 of two young women, Asiya Jan, aged seventeen years and a high school student, and her sister-in-law Nilofar Jan, aged twenty-two years (respectively sister and wife of Shakil Ahmed Ahangar, son of Abdul Ghani Ahangar resident of Bongam-Shopian) is described in a report by the Majlis-e-Mashawarat, a group formed by Shopian residents to seek justice in the case. The two women “. . . went missing in the evening while returning home from their family orchard situated in Nagbal-Shopian. When they did not return home . . . Shakil along with his relatives and friends searched for them all around the place. On their failure to trace out the two women, he reported the matter to local police station at Shopian around 10 pm. Despite desperate searches lasting hours by Shakil and other family members along with a police party headed by Mohammed Yasin, the young missing women could not be traced. The next morning their ravished and violated bodies were recovered from an area close to the paramilitary and police infested areas. The body of Neelofar was first found near the bridge upstream and after another agonizing search the body of Asiya was also found about 1.5 kilometers downstream. Around these spots there are security force

camps including Rashtriya Rifles, Central Reserve Police Force (CRPF) and Special Operations Group (SOG) of Jammu and Kashmir Police. In fact the District Police Lines and the residential quarters of police personnel are close by the two spots where the bodies were found. Immediately people raised concerns and got enraged alleging the innocent young women were brutally murdered after being raped.”¹⁰

The doctors who first examined the bodies and those who prepared the bodies for burial found evidence of physical and sexual violence. The police however refused to file an FIR until June 7, on orders from a court. Large-scale protests and popular mistrust of the police led the state government to appoint a judicial commission under Justice (retired) Muzaffar Jan to investigate the crime. In its interim report submitted on 21 June, the Jan Commission confirmed the rape and murder of the two women based on evidence presented by the Forensic Science Lab. On the basis of this report, senior police officers were suspended for negligence. But the report also muddied the waters by accusing the doctors who carried out the initial examination and confirmed evidence of rape, of negligence. The report was rejected by the Srinagar High Court Bar Association, which carried out an independent investigation. The head of the inquiry commission also distanced himself from annexures to the report that sought to cast doubt on the character of the victims and their families, which had been added by the police officers themselves under investigation.¹¹ In September 2009 the investigation was handed over to the Central Bureau of Inquiry (CBI). The CBI inquiry concluded that there was no crime, that the women had drowned accidentally, and that the policemen accused earlier of negligence and complicity were innocent. The report was seen by human rights activists as a cover-up, as the water in the stream was too shallow—according to inhabitants, between ankle-deep and knee-high—for accidental drowning, and the bodies were found at dawn in an area that had been thoroughly searched the previous night under the illumination of the searchlights at the perimeter fence of the military camp.

The CBI then “. . . filed supplementary charge-sheets against the State prosecutors, doctors, advocates for the complainant,

advocates demanding justice and the family members of the women.”¹² Shakeel Ahangar, who remains determined to pursue justice for his sister and wife, is persecuted and threatened by local police and paramilitaries—his phone is tapped, his home is under surveillance and his efforts to communicate with media and supporters are blocked by police, who have also arrested him for trying to hold a press conference.¹³ Three years later, members of the Majlis-e-Mashawarat Shopian (MMS), which spearheaded the Shopian agitation, their relatives, and the family of the victim family report that they have been put on a ‘security index’ by the police, and their applications for passports denied.¹⁴

Shakeel Ahangar routinely faces arrest each time he tries to leave his home to travel to Srinagar or outside Kashmir. He has had to sell his land and property to carry on his fight for justice, which, he say, will continue till the day he dies. It is sobering to realize that this common phrase is actual truth in his case, as it has been for so many other Kashmiri families. He argues that justice is the highest goal, and for the universality of human rights, which cannot be contingent on the religious, racial or national identity of those concerned.

Like all Kashmiris, Shakeel Ahangar is hurt by the contrast with the Delhi rape case. In December 2012, a young woman in Delhi, traveling home late at night, was attacked, raped, and beaten by five men in a bus. Her companion was also badly injured. She died a week later of her injuries. The incident produced massive protests in the Indian capital. Kashmiris who protest against rape and sexual violence face gunfire, tear gas, mass arrests and torture. At the protests in Delhi, a few brave, principled souls carried placards remembering Asiya Jan and Nilofar Jan, the women of Kunan Poshpora and the victims of military rape and murder in the northeast like Manorama Thangjam, a young Manipuri woman who was raped and murdered by Indian soldiers in 2004 (Mathur 2012b).

While those accused of the rape in Delhi were arrested within days and prosecuted in a fast-track court, the perpetrators of the crimes in Kashmir and the northeast have never been held accountable. The exception is enshrined in the new law on rape and sexual violence enacted in the wake of the Delhi rape case.

Under the blaze of media scrutiny, the Indian government made a great show of consulting NGOs and women's groups. The Verma Commission, headed by a highly respected former Chief Justice of India, was tasked with drafting the new legislation and produced an exemplary document in less than a month. However, in February 2013, as the publicity died away, in a classic bait-and-switch gambit, the Indian government enacted the law as an ordinance that excluded crucial elements of the draft prepared by the Verma Commission.¹⁵ The new law exempts the armed forces from criminal prosecution for rape and sexual violence. In providing legal protection to those using rape as a tool of war, it thus goes even beyond the amnesties decried by the UN Security Council Resolution on Violence against Women in Armed Conflicts.

Not only does the Indian government provide legal impunity to its personnel accused of rape, torture, and other serious crime against humanity, accused perpetrators with cases pending against them in court are often chosen for special bravery and gallantry awards at the local and national level. Journalist Baba Umar documents such cases, including a police officer who has been indicted by the State Human Rights Commission on two separate counts of the rape of a minor girl and the custodial killing of a youth. The officer was awarded the President's Police Medal for Gallantry in 2012.¹⁶

Such brazen affirmation of the crimes has multiple purposes: “. . . Dr Shiekh Showkat Hussein, who teaches International Humanitarian Law and Human Rights in the University of Kashmir, says conferring medals to such accused will only embolden those who are already immunised through the provisions of Armed Forces Special Powers Act (army) and Disturbed Area Act (police).

‘Such awards are an insult to Kashmiris. It’s a humiliation to the victims of human rights abuses be it torture, rape or other forms of inhuman and degrading treatment. Besides, the government promises of nailing down the perpetrators of such crimes at those critical junctures when people on the streets have become a red herring to divert attention. That’s what we have seen during the past two decades,’ . . .”¹⁷

The victims of military violence seek vindication and healing through efforts to prosecute those responsible for the crimes against them. APDP is again a support and resource for the victims and has expanded its mandate to include torture and violence against women. A newsletter recently launched by APDP, with the help of interns, reports on the first case sent to the UN Special Rapporteur on Violence against Women: "For the first time in the history of APDP a special case has been recorded to be forwarded to the UN special Rapporteur on violence against women. Zahida Akhtar was falsely booked under Public Safety Act as she came in the line of fire during a protest carried out by the locals of Anantnag against a wrong killing of a boy whose body was discovered in a stream nearby in 2010. Zahida Akhtar received a bullet in her right leg for which she required serious treatment. Since then her and her family's life has been made miserable by the CRPF and Police. She has also been kept under custody, beaten up while in treatment, and harassed by the said authorities. The atrocities are still continuing but we hope our efforts would be answered to get her justice."

The Meanings of Violence

While Elaine Scarry's 1986 work has been regarded as the classic analysis of torture, its curiously apolitical (Shklar 1986) and voyeuristic accounts of suffering leave the unmaking and making of the world devoid of context and purpose. Judith Shklar (1986) in a highly critical review noted that torture: "... cannot be understood as a phenomenon that takes place in a chamber between two people, a victim and a torturer. It is always a part of a judicial and political system. To ignore that is to falsify its character and to make any effort to halt or impede it impossible."

Torture is located, and is only possible, within a political and judicial system. It is also located, and also only possible, within a cultural system, that is, a system of meaning (Rejali 2009; Taussig 1984; Ward 2005). Far from being meaningless, the violence not only serves a purpose but is a ritual act, enacting social beliefs about the world and the place of people in it. Unlike the sadistic

pain-inducers of Scarry's account, who operate in a political and social vacuum, torturers see themselves as patriots, upholders of the moral and social order which is threatened by those being tortured. As Taussig (1984) reminds us, torture represents not the breakdown of civilized values but their deepest expression.

Candid public interviews with torturers are difficult to come by; but in this category, a TV conversation recorded in 2006 with an Indian police officer, Deputy Superintendent of Police (DSP) Davinder Singh, who was attached to a counterinsurgency unit in Srinagar in the late 1990s, is remarkable for the light it sheds on the process and the thought behind it. In a detailed account of the Afzal Guru case (which is discussed in the next chapter), the eminent legal scholar A. G. Noorani (2013) discusses Davinder's Singh's description of the torture he oversaw in Kashmir, and of his own reputation as a torturer:

He boastfully exposed himself in an interview in 2006. It merits quotation in extenso. Afzal Guru yielded nothing on interrogation by Vinay Gupta of the dreaded Special Operations Group. "But I requested Vinay not to release him and send him to my camp Humhama (Budgam District). That is how I know Afzal. I did interrogate and torture him at my camp for several days. And we never recorded his arrest in the books anywhere. His (Afzal's) description of torture at my camp is true. That was the procedure those days and we did pour petrol in his arse and gave him electric shocks. But I could not break him. He did not reveal anything to me despite our hardest possible interrogation. We tortured him enough for Gazi Baba but he did not break. He looked like a 'bhundu' those days, what you call a '_____' (an Urdu swear word for naïve or easily duped persons) type. And I had a reputation for torture, interrogation and breakings suspects. If anybody came out of my interrogation clean, nobody would ever touch him again. He would be considered clean for good by the whole department."

Further on in the interview, DSP Davinder Singh went on to say that his motives for carrying out the torture were the purest: "I don't do for myself, I do this for the nation."

“That was the procedure in those days.” The continuity in techniques of torture is recorded year after year. The Srinagar High Court Bar Association issues annual reports based on their visits to jails in Kashmir and throughout India where Kashmiri prisoners are held. The 2004 report was compiled by a team of advocates on the basis of interviews with 300 detainees in various jails and sub jails across the state. Some of the detainees had been held for as long as 10–12 years; some continued to be held despite orders from the Srinagar High Court for their release. Methods of torture included “. . . electric shocks, cane charging, fracturing of joints and bones with callous beating, ironing of backs and buttocks, stretching of legs, thighs . . . Majority of the detainees could not bear the third degree torture and some of them breathed their last in the detention centres. . . . Detainees are compelled to drink quantities of muddy water till they vomit, soldiers urinate into the mouths of bound suspects; chili powder being rubbed into the wounds. Mental torture is frequent and random. It is done in the shape of abuse, verbal humiliation and remarks offensive to religious sentiments.”¹⁸ Further, “It appears after long spells of torture, the inmates are put on sedative drugs and tranquillisers. Violations of provisions contained in jail manual and laws on the subject are manifest from existing condition of inmates. In most jails, no medical officer is posted. . . . Some detenus have attempted suicide after harsh treatment meted out to them. In Kathua, Mohammad Ayub complained a chest pain but was denied treatment. ‘He attempted suicide inside his barrack by sprinkling kerosene on his body.’ . . . Mehraj-ud-din Sofi, a resident of Hazratbal . . . was ‘subjected to intense torture and hanged by a metallic wire. While hanged from his hand, his left hand broke which was amputated. The remaining portion gives him acute pain . . . but he is denied treatment’, the report said. He is undergoing detention at Kotebilwal. Women and children too, are included among the prisoners.”

Recent Amnesty International (2011 and 2012) reports on detentions confirm the persistence of torture as a routine practice.¹⁹ A disturbing new trend is the detention and torture of teenagers, including minors, for participating in street protests.²⁰ Syed A. R. Geelani doesn’t discuss details about his time on death

row and the tortures he experienced there. Some idea of his ordeal can be found in visitors' and observers' accounts. Basharat Peer covered his trial and reports: "Bismillah told me that he had visited his brother a week after his arrest, where he was living in a cage-like room in a Delhi Police interrogation centre. Geelani was limping, had wounds on his ankles, nylon ropes tied around his wrists had left blue marks. Bismillah had brought him some food, but the police torture had left Geelani without the appetite or energy to eat" (2008: 91–92).

The low-key, up close description speaks volumes about the impact of torture on the individual, the family and community. As noted above, torture cannot be understood in a social and political vacuum; nor do solutions exist independently of an agenda of social and political change. SAR Geelani's experience drives his campaigns with the Committee for the Release of Political Prisoners (CRPP) to defend the rights of the most vulnerable. CRPP fights for the rights of Kashmiri prisoners in Indian jails, but has also built a broad coalition of support for prisoners and detainees from ethnic and religious minorities, tribals, Dalits, and the human rights advocates who suffer for supporting them.²¹ The CRPP demand that these prisoners be accorded the status of "political prisoners" underscores the fact that their incarceration is due to their religious or ethnic identity or political beliefs. It casts a remarkably clear light on the political ecology of power and resistance.

The political analysis underlying CRPP's legal activism connects the struggles for rights and justice to the larger question of the nature of the political system that makes such injustice part of routine governance. The roster of those the Indian state and society consider to be enemies is an object lesson in the politics of domination. The list of the "usual suspects" is headed by Kashmiris closely followed by Indian Muslims, Sikhs, Dalits, tribals, trade unionists, lawyers, journalists, academics, doctors: in short, the religious and ethnic minorities whose very identity makes them suspect, as well as anyone who questions the injustice and violence of the postcolonial order (cf. Banerjee 2004; Mahmood 2012). Pulling together the threads of history and politics that tie together the "terrorists" and "secessionists" that the nation views

as its enemies, Sumanta Banerjee (2004) writes of the Indian home ministry as the postcolonial inheritor of colonial strategies of control: "The British administrators in India were fond of euphemisms, and coined friendly terms to describe unfriendly functions. The term 'home' was used for that department in their government which looked after policing of their subjects. The rulers of independent India, obviously finding it a homely term, adopted it from their erstwhile colonial masters to designate the special ministry they set up to keep vigil and enforce the law. The ministry of home affairs as it came to be known, is primarily entrusted with the task of dealing with all matters relating to 'internal security.'"

Banerjee's analysis highlights the ways in which cultural difference becomes a social marker that identifies and justifies economic and neocolonial domination and exploitation. It is worth quoting at length. As home affairs are defined in terms of internal policing, the creation of malcontents proceeds apace:

During the last 50 years, the Indian state seems to have succeeded more in alienating a large number of our people than in winning them over into the folds of its 'home'. It is the home ministry which had been trying to rule vast swathes of our country with a rod of iron—from Kashmir in the north-west to the seven sisters in the northern-east. Laws like POTA and AFSPA, atrocities by security forces, indiscriminate arrests of innocent people, killings in false encounters—all these have become the natural order of things in these states. The measures adopted by the home ministry to suppress terrorism and secessionist movements (which ironically enough are the offspring from the centre's licentious exploitation of the people of these areas), have ended up antagonizing the common people living there.

But it is not only these peripheral territories on the northern margins of what the Indian state considers its 'home'—the Aryavarta—that remain alienated. A large stretch that runs through this Aryavarta itself seems to be falling out from the territorial control of the nation state. Landless peasants, tribal poor, and Dalit laborer inhabiting a long belt that stretches from Bihar and Jharkhand, through Chhattisgarh, Madhya Pradesh and Orissa down to Andhra Pradesh, are increasingly becoming restless and trying to carve out a different type of 'home' for

themselves in search of a more equitable social and economic order. Reluctant to introduce such an order in their lives, the state has responded by branding them as 'left extremists', and is attempting to suppress them by military means. It is thus forcing them out from the much-needed democratic process of recognising pluralism and negotiating differences—a process that is essential in the long task of building up an egalitarian society in India. Instead, India is fast becoming a 'home' bursting at its seams with estranged malcontents.

Dibyesh Anand offers a similar analysis, using the term Post-colonial Informal Empires (PFE) to describe the "... asymmetry of power between the political center and the periphery, and the deployment of a specific nationalism that allowed recognition of ethno-national minorities on the borderlands, but only on the terms set by the center. As China and India emerge as global powers largely on the basis of economic growth, it becomes important to pay closer attention to the way in which economic interests remain subservient to the nationalist political sphere in the borderlands" (2012, 69).

The received wisdom in South Asia, that nations with great cultural diversity require strong central control, has been practiced for seven decades with devastating consequences. This combination of extractive and repressive rule directed from a remote center, overlying religious and ethnic difference, has produced a distinctive model of ethnic strife in India and South Asia. The Kashmiri experience suggests that the opposite political model—devolution of power and genuine local autonomy—provides the answer to the pervasive ethnic conflicts. As such, it shows the path that will have to be followed by future peace-making processes. In a recent article on subregional diversity and resultant conflicts in the three regions of Kashmir, Jammu, and Ladakh, Gull Muhammed Wani (2014) argues that the solution is to implement meaningful autonomy at the local level. Thus the Kashmiri experience and the solutions that emerge from it are also applicable to the entire region.

Sovereign Rites

“Who else know the story of injustice better than my wife and son?”

—Afzal Guru, quoted in *Mulakat Afzal*, by Vinod K. Jose¹

The struggle for sovereignty in Kashmir thus throws into sharp relief two different claims to life and death. While the Indian state claims and exercises absolute power over life and death as an attribute and display of sovereign power, its victims speak the language of justice, kinship, and love. It takes the Poet, again—Rumi himself—to remind us that the tears of the weak and powerless are not to be despised, for they have great power.

India’s disputed borders are the legacy of departing colonialism, but come to be seen as natural, eternal and non-negotiable. This view is best expressed in the phrase “the territorial integrity of the nation,” which must be defended at all costs. While territory, expressed as lines on a map, is claimed for the nation, the peoples and cultures of the borderlands are much harder to annex to the nationalist project. Borderlands inhabited by minorities are dangerous to the nation-state, even more so when such identities are shared across borders. Cultural difference is seen as threatening and un-assimilable and implies suspect political loyalties. The display and assertion of sovereignty requires, above all, images of the enemy. The inhabitants of the borderlands are chosen for this role (Thiranagama and Kelly 2009, Kak 2013a), even as their homelands are claimed as an eternal and indivisible part of the nation. This discourse reflects a reality obvious to every Kashmiri. In the midst of a popular uprising against Indian rule in the summer of 2010, as unarmed demonstrators were shot

down by Indian paramilitaries, a young Kashmiri woman said to me “*Hindustan ko sirf Kashmir ki zameen se matlab hai, yehan ke logon se nahin*” (“India only cares for the land/territory of Kashmir, not for its people”).

The Nature of Sacrifice

Displays of sovereignty and its ultimate ritual, the death penalty, are also rich in paradox. Two empty graves in Kashmir await the return of the *shahud*, the martyrs Afzal Guru and Maqbool Bhat, executed by India and buried in Tihar Jail in Delhi. The counterpoint to the empty graves is the discovery of thousands of unmarked mass graves across Kashmir. In a macabre settling of scores, the Indian state offers to Kashmiris bodies without names by way of exchange for graves without bodies. Both are proclamations of absolute power. Both are doomed to both political and historic failure, for it is memory, not power, that thrives on paradox and sacrifice.

Maqbool Bhat was the founder of the Jammu and Kashmir Liberation Front, formed in 1974 to carry on the armed struggle for Kashmiri independence. His politics was deeply rooted in the memory of the struggle for popular sovereignty: “For us, Azadi (independence) means not just getting rid of foreign occupation of our beloved motherland but also to remove hunger, poverty, ignorance and disease and to overcome economic and social deprivation. One day, we shall achieve that Azadi.” The stories of Dogra oppression were not grandparents’ tales but a matter of childhood experience for Maqbool Bhat. In a letter he wrote from prison, he recalled an incident from 1945/6 when as a child he had seen the village elders pleading with the jagirdar (landlord) to reduce the rents owed following a bad harvest. When the landlord refused and prepared to leave after ordering his agents to ensure collection of the full amount, the villagers had all the children lie down in front of his car: “Therefore when hundreds of children laid themselves down in front of the jagirdar’s car he was pleaded either to stop the further collection of grains or crush these starved and naked children under his car. I was also amongst these children and remember till this day that great big

hue and cry. The children as well as elders, all were crying knowing that once the jagirdar left the village without writing off the further collections, the peasants will have to face the qiyamat; the day of judgement. At last the jagirdar seeing the hue and cry of the naked and hunger worn yellowish children agreed to make some concessions”² (Bhat 2012). Bhat was an early advocate of armed struggle against Indian rule. He was hanged by India on 11 February 1984 and his body buried in Tihar Jail in Delhi, despite Kashmiri efforts to return him to his native land for burial.

Like Maqbool Bhat, Afzal Guru was one of the hundreds of Kashmiris held in Indian prisons. Their incarceration, torture and ritual sentencing serve as modern morality plays. This ritual theatre creates through media and public discourse the image of the Kashmiri as terrorist, supposedly motivated only by religious fanaticism and an irrational hatred of India, the “secular” and “democratic” nation. This systemic scapegoating produces sacrifices, which are intended to ritually mark the boundaries of the nation and its enemies. The sacrifice, paradoxically, is also a martyr; and the shedding of innocent blood feeds memory and resistance.

Accused of helping to plan the attack on the Indian parliament in 13 December 2001, Afzal Guru was executed in February 2013. The actual facts of the case, which have been extensively documented and analyzed by legal experts and leading figures in the fields of civil liberties and social justice, (e.g. Noorani 2013; Ramanathan 2013; Roy ed. 2013) are chilling, both in terms of what is known and the questions that remain unanswered. The story of the attack takes us deep into the epistemic murk engendered by Indian counterinsurgency. The five attackers, who easily drove past the security check posts on the road leading to the Parliament building, were all killed in the ensuing shootout with Delhi police. Within three days, Afzal Guru, his cousin Shaukat Guru, Shaukat’s wife, Afsan Guru, and S. A. R. Geelani were arrested and charged with conspiracy. The case against the four accused rested solely on the circumstantial evidence presented by the Delhi Police, represented in this instance by the Special Cell, an antiterror unit with a reputation for extrajudicial killings in fake shootouts, torture, and

extortion. The appeals court later threw out this circumstantial evidence. The four accused were tried before a special fast-track anti-terrorism court presided over by Justice Shiv Narayan Dhingra, famous as a hanging judge (Peer 2008, 92).

The trial quickly became a media circus, with the Special Cell parading Afzal Guru before TV crews to record his “confession.” Offstage, the accused were tortured and forced to sign blank pages on which the police wrote their confessions. Geelani’s wife and two young children were also taken into custody and Afzal was warned that if he did not cooperate with the police, his wife and son would also be arrested and tortured. In his statement before a magistrate, Afzal recounts the full story of his imprisonment and trial. He also then retracted the fake “confession” written by police on the blank sheets he had been forced to sign.³

In prison, Geelani and Afzal were attacked by guards, inmates, and members of the right-wing Hindu nationalist party Shiv Sena. Rather than having the witnesses identify Afzal Guru, he was taken to their various locations to identify them. At the trial, Afzal Guru was not provided any legal defense. When he complained about this to the judge, a lawyer was appointed as *amicus curiae*. The title refers to one who serves the court in an advisory capacity; he was not expected to and did not in fact provide any defense for Afzal Guru.

Thus at the crucial trial stage before the sessions court, Afzal Guru was denied legal counsel. He could not afford to pay for a lawyer; he provided the court with a list of lawyers he hoped would defend him. Only one, Ram Jethmalani, senior counsel and a Member of Parliament, agreed to defend him. He withdrew after his office was attacked and trashed by the Shiv Sena.

The trial court found Afzal Guru guilty, based on the “confession,” composed by police after he was forced through torture to sign blank papers (Srivastava 2006). The special court sentenced Afzal Guru, Shaukat Guru, and S. A. R. Geelani to death and Afsan Guru to five years’ rigorous imprisonment. The case went to appeal in the Delhi High Court in 2003. The appeals court rejected the evidence against the accused, acknowledging that it had been extracted under torture, or just fabricated by the police. The appeals court acquitted Geelani and Afsan Guru, but upheld

the death sentence for Afzal Guru and Shaukat Guru. Afsan Guru, who had converted to Islam to marry Shaukat, faced extra abuse from jailers for choosing to marry a Muslim (Geelani 2008). She was pregnant at the time of her arrest, and her baby was born in prison. The ordeal left her completely broken.

In August 2005 the case went before the Supreme Court of India. The court also rejected Afzal Guru's confession, but upheld the death sentence and added three life terms (Mukherji 2013). Shaukat Guru's death sentence was commuted to ten years in prison. While sentencing him as a conspirator, the Supreme Court acknowledged that there was no evidence that Afzal Guru had any links to any militant organization (Roy et al. 2013; Srivastava 2006). Nevertheless, the judgement said that the seriousness of the attack on the parliament demanded an execution: "The incident, which resulted in heavy casualties, has shaken the entire nation and the collective conscience of the society will only be satisfied if capital punishment is awarded to the offender. The challenge to the unity, integrity and sovereignty of India by these acts of terrorists and conspirators can only be compensated by giving maximum punishment to the person who is proved to be the conspirator in this treacherous act. The appellant, who is a surrendered militant and who was bent upon repeating the acts of treason against the nation, is a menace to the society and his life should become extinct" (in Srivastava 2009).

In 2006, the Supreme Court announced a date for the execution: 20 October, the day of Diwali, the Hindu festival of lights, which symbolizes the victory of good over evil. As Afzal Guru's supporters mobilized for a campaign to stop the execution and demand a fair trial, Swapan Dasgupta (who made a seamless transition from being a Subalternist historian to right-wing Hindu nationalist ideologue) wrote: "This is the time of the year when India celebrates the triumph of good over evil, of dharma over adharma. In the east, we commemorate the homecoming of the Goddess Durga, the personification of shakti and the divine force which was created to slay the demon Mahishasura. In other parts of India, the triumph of Ram over Ravana is observed with the ceremonial burning of effigies. . . .

It is, therefore, ironic that this should also be the time the country is confronted with a disagreeable demand aimed at puncturing our sense of dharma. Under the expedient guise of forgiveness and compassion, there is an insidious attempt to taunt India and the Indian way of life. The reference is, of course, to the orchestrated outcry against the death sentence handed out to Afzal Guru, the jihadi from Sopore, convicted for his role in the attack on Parliament in 2001” (2006).

Afzal refused to file a mercy petition, but his wife did so on his behalf, and the execution was halted for the time being. According to expert legal opinion, legal processes to review the entire case had not been exhausted. Ram Jethmalani, a veteran lawyer and former minister in the Indian government, believed that the Indian President has the power not only to commute the death sentence, but to disagree with the Supreme Court’s interpretation of the law: “The constitutional power is that the President has the power to disagree with the Supreme Court both with its findings of fact and law.”⁴ Afzal Guru’s supporters, following his wishes, insisted on seeking justice, not mercy.

On 9 February 2013, Afzal Guru was hanged secretly in Tihar Jail and buried there. The mercy petition, pending for seven years, had been denied by the Indian President, but the fact was not made public until after the execution, denying Afzal and his supporters the chance to mobilize remaining legal remedies. Afzal’s family, too, were not informed before the execution and were not able to meet him one last time (Ramanathan 2013). Despite requests from his family, his body was not released to them for burial in Kashmir (Waheed 2013).

Equally disturbing is Afzal’s version of the story, found in his confession before a magistrate (M. A. Guru 2006), in a detailed interview with an Indian journalist (Jose 2008), and in a public appeal by his wife, Tabassum Guru (2006). Their story mirrors the experience of thousands of young Kashmiris. Like thousands of young Kashmiri men responding to the Indian military crack-down in the early 1990s, he crossed the Line of Control to train as a militant. Disillusioned by what he saw there, he returned and surrendered to Indian forces without ever taking up arms. His surrender and “rehabilitation” were the beginning of the family’s ordeal at the hands of Indian counterinsurgency forces. As

a surrendered militant, he was forced to report regularly to the camps of the Rashtriya Rifles and STF (Special Task Force), both notorious for human rights abuses (Kak 2013a; Human Rights Law Network 2009). He was regularly detained and tortured to force him to turn informer or simply to extort money. He had to sell his property and his wife's jewelry to buy his freedom. The ultimate threat that ensured his cooperation was against his family—that his wife and son would face the same treatment unless he did exactly as he was told by the officers of the counterinsurgency forces. For a while, he moved to Delhi with his wife and young son to escape continuous persecution (Afzal Guru 2006; Jose 2013). On his return to Kashmir, he was again contacted by Davinder Singh, then Deputy SP (Superintendent of Police) at Humhama police station in Srinagar, who asked him to escort a man named Mohammed from Kashmir to Delhi. Guru says in his statement that he did as he was told; he never saw the man before or since (Afzal Guru 2006; Srivastava 2006). According to the police, Mohammed was one of the terrorists shot dead in the attack on Parliament. It was perhaps hoped that all the unanswered questions about the role of the counterinsurgency forces would be buried along with Afzal Guru. Aggressive attacks on Afzal Guru's supporters and those concerned with the manifest lack of justice also serve to cloud and cover over these questions.

In a path-breaking analysis, legal scholar Jim Drummond, who defends capital punishment cases in the United States, examines the comparative politics of the death penalty. He writes that: "There are significant parallels and contrasts when looking at how the United States and India deploy the criminal justice system as an implement of class and ethnic warfare. As a matter of civic introspection, it is important to compare the various methods by which national and provincial governments seek to create 'reverse gated communities' to contain dissidence arising from the fruits of social injustice" (2014, 41). This opens the way to understanding how the case of Afzal Guru illustrates the social referents of Indian justice. In the roll call of prisoners on death row in India, nearly all are minorities—Muslim or Sikh—tribal, or Dalit.⁵

They ask me to tell them what Shahid means –

Listen: It means "The Beloved" in Persian, "witness" in Arabic.⁶

The death penalty thus has little to do with guilt or deterrence. It serves rather as a form of ritualized violence concerned with marking and safeguarding social boundaries, through the mechanism of the sacrifice (Hubert and Mauss 1964). The sacrifice is also, of course, a scapegoat (Girard 1977). Indeed the Supreme Court's ruling in the Afzal Guru case almost recognizes this, stating that a life must be forfeit to satisfy the "collective conscience of the nation." Afzal Guru personifies the perfect enemy needed by the nation's media, politicians, military and intelligence establishments. He also represents another lonely and endangered figure, the Kashmiri Muslim in Delhi, liable at any time to be confronted, attacked, imprisoned, and tortured.

As a sacrifice, the death penalty brings together and protects the community, ". . . in establishing a means of communication between the sacred and the profane worlds through the mediation of a victim, that is, of a thing that in the course of the ceremony is destroyed" (Hubert and Mauss 1964, 97). The common thread in anthropological theory on sacrifice is "the creation of sacred objects through the constitution of a loss" (Borneman 2002; also Bloch 1994). The creation of community through the destruction of that which is sacrificed is thus the ideal cultural spectacle for the disposal of bodies representing qualities that threaten the nation's construction of itself. The death penalty becomes the quintessential ceremony of sovereignty, displaying the power of the sovereign nation and the destruction of its enemies. As an act of sympathetic magic, by destroying that which is sacrificed, it symbolically destroys all its qualities and those who bear them.

But the struggle for popular sovereignty is also a deeply moral one, and sacrifice can have many meanings. One of these, seen from the other side, is martyrdom. In the case of Afzal Guru, we witness the unfolding story of the power of sacrifice. The shedding of innocent blood has a profound meaning, perhaps captured in the lyrics of rapper MC Kash's song "Take it in Blood." Dedicated to Parveena Ahangar, the song combines music in the traditional Kashmiri style with rap lyrics. The Kashmiri verses in the song are as sung by a missing son to his mother, asking her not to cry, even though he had died.

O my mother! I would die! Wipe my tears, they are nothing! But blood.

The lyrics are repeated at the end but are changed now to “O my mother! I am alive!” This is part of the mystery of martyrdom. Innocent blood, wantonly and willfully shed, does not die but lives forever as memory. The meaning of the martyrdom of Afzal Guru is only now taking shape before our eyes. As the strategies of Indian statecraft seek to make the judicial system and the media the sites for the production of terrorists who threaten the integrity of the nation, they succeed most of all in fixing Tihar Jail as a focal point in the space of death within which India creates the martyrs of the Kashmiri movement for independence.

Territory

The counterpoint to the empty graves awaiting the return of the martyrs are the unidentified bodies buried in the mass graves being discovered in different districts of Kashmir. Mirza Waheed’s novel *The Collaborator*, published in 2011, eerily prefigured these discoveries. The protagonist, a young boy living in a border village near the Line of Control, watches as his friends and school-mates disappear across the line to join the insurgency. As the son of the village headman, he is forced by the army camped nearby to bury the unidentified bodies they bring him. Then there is the haunting, real-life testimony of Atta Mohammed, recorded by a young Kashmiri journalist, Fahad Shah⁷:

My name is Raja Atta Mohammad Khan and I am 70 years old. I have buried more than 235 bodies of unknown people. . . . During times of militancy, our village was also facing the same conflict, but the militancy was not extreme. I have a small patch of land near my house where I used to work the whole day. One evening during the month of Ramzaan (a month of fasting for Muslims) in 2003, I was working in my fields, waiting for Iftaar. I saw a policeman coming towards me. He told me that a body needs to be buried. I told him that I was working in my fields, and could not do it and asked him to get someone else. But he didn’t leave; instead he sat down beside me and started crying. He pleaded as

he could not find anyone to dig a grave. He was very tense, so I couldn't refuse him. I went home and got my digging tools. . . . I asked the policeman about the body and he said that it was of an Afghani militant who has been killed in Tangmarg, around 50 kilometres from Srinagar. I dug a grave in the ancestral village graveyard and buried the body. While digging the grave, my entire body was trembling. I couldn't sleep for the whole night. We couldn't recognise the Afghani militant. His face had been disfigured and there were severe burn marks on his neck and shoulders. After burying him I asked the policeman: Why did you bring the body here? He replied, 'We used to bury at Kichhama but there is no space left in the graveyard now.' Later I discovered that the Afghani militant was a native of Jal Sheeri, Varmul. His name was Bashir Ahmad Dar. I can never forget that first day I buried a body. Over the years, most of the corpses have been from Tangmarg, Kreeri, Sopore and Gulmarg. I have been the only caretaker of the graveyard and I hold every story deep inside my heart. I haven't forgotten anything, even though many years have passed. The world only hears about what happened here, but it is only Allah and I who know what I have seen and been through. The army used to hand over bodies to local police stations and the policemen had to bury them. The policemen in turn used to come to gravediggers like me with the bodies. From 2003, the brutal period started, which lasted till 2006. It used to be one body, three bodies or sometimes more than six per day. It continued for years and I would bury them here in the same graveyard. One day the police brought two bodies. Both corpses had torture marks and bruises all over. I could see their bones. Even today, after so many years, I remember looking at those bodies. It was painful to witness all of that. They looked like twin brothers in their early 20s. When I returned home after burying them I couldn't stop myself from weeping. Almost everyone in my village started calling me a police agent. But this never stopped me from burying the dead. How could I let the bodies decay by not burying them?

Early in 2007, the Kashmiri press began reporting on the presence of mass graves in the army and SOG camps. In July 2011, the first official acknowledgement came in the form of a report by the State Human Rights Commission (SHRC) on the mass graves, taking *suo moto* cognizance of NGO and media reports.⁸ An investigation conducted by the SHRC found 2156 unidentified

bodies buried at thirty-eight sites. The SHRC report on the investigation asked for the creation of a credible body to identify the bodies through DNA testing. It also called for prosecution of the perpetrators of the crimes.⁹

*The lost speak like this. They haunt
a country when it is ash. Phantom heart,
pray he's alive.*¹⁰

The SHRC report opened the floodgates, with elected representatives in the J and K legislative assembly, a body not known for its courage in challenging the powerful army, insisting on debating the issue. Ruling party members recounted their own experience with military operations in border regions, recalling friends who had been detained and disappeared. A national conference legislator from Kupwara talked about “a thousand ft deep gorge in his border constituency where crows are eating corpses of men.”¹¹ Media interviews with the gravediggers in the villages made it clear that the majority of those buried in the graves were innocent civilians killed by the armed forces. Bodies were often mutilated, and missing parts.¹² In response to these reports and the debates in the legislative assembly, the Chief Minister of Jammu and Kashmir, Omar Abdullah, announced that the appropriate forum for discussing the issue of the mass graves was a truth and reconciliation commission, to be created at some time in the future.

One year later, in September 2012, as the news cycle moved on, a scarcely noticed AP news item reported on the Kashmir Home Department's response to the SHRC. The Home Department's Action Taken Report claimed that contrary to the SHRC's findings, those buried in the mass graves were militants.¹³ It also ruled out DNA testing of all bodies to determine if they were civilians who went missing, or unidentifiable militants. If the families of missing persons wanted the bodies to be DNA tested and identified, they would have to identify the precise location—the exact graveyard and grave—where they think their missing relative was buried. DNA testing of all bodies, according to the Home Department's response, could “attract undesired media

attention, cause prolonged trauma to the people and can also act as a trigger point/event for causing serious law and order disturbances.” The report concluded by asking the SHRC to “dispose of” the case, which should be handled by a truth and reconciliation commission. The creation of such a Commission, however, the report added, requires consultation and a broad consensus among “all stakeholders.” No details were given regarding the stakeholders and procedure for attaining such a consensus.

The number of documented mass graves now stands at 6277.¹⁴ There has been no discussion of the disappearances or of the mass graves in the Indian Parliament.

Kashmir and International Justice

The arc of the moral universe is long but it bends toward justice.

—Martin Luther King, Jr.

While the levels of violence have receded since 2003 (Iqbal et. al. 2014, 52), the massive military presence and its attendant abuses continue. Despite tremendous odds, including the legal impunity provided to the Indian military, there are growing efforts by Kashmiris to bring the perpetrators to justice. These initiatives together with recent visits and reports by UN Special Rapporteurs on the situation of human rights defenders, on extrajudicial executions, and on violence against women can form the basis for UN-led efforts to begin the work of documentation with a view to future criminal prosecutions. While international tribunals and criminal prosecutions have so far addressed post-conflict or transitional societies, the case of Kashmir demands the urgent recognition that justice is an essential component of the peacemaking process itself. Bringing human rights abusers to justice cannot wait until the establishment of peace; rather, the prosecutions themselves point to the direction the peace process should take.

In an essay written in 1997, Juan Mendez noted that “in only a few years the international community has made considerable progress toward the recognition that a legacy of grave and systematic violations generates obligations that the state owes to the

victims and to society.”¹ Over the past two decades, the concerns of victims of massive human rights abuses in situations of war, internal conflict, and political repression have been the driving force behind the creation of international human rights mechanisms. International criminal prosecutions for war crimes and crimes against humanity have evolved to counter the problem of the impunity provided to abusers by national governments. A variety of mechanisms and processes—international criminal prosecutions, truth commissions, reparations, institutional reform, efforts to promote reconciliation and preserve collective memory—have affirmed that peace and justice are inseparable.² From Guatemala to Cambodia, abusers have been brought to justice with the active help and intervention of the international human rights community—human rights advocates, the UN human rights system, researchers, and international media—collaborating with and supporting victims, survivors, local NGOs, and courts.

There is no statute of limitations in international law on war crimes and crimes against humanity. Article 7 of the Rome Statute of the International Criminal Court defines crimes against humanity as “any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack . . . : murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

It further defines enforced disappearances as “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”³ As seen in the preceding chapters, the prohibition of crimes such as torture, extrajudicial killings, disappearances, and rape have the status of *jus cogens*; that is, peremptory law from which no derogation is possible. Nevertheless, in a pattern of military terror that spans twenty-five years, the perpetrators of such crimes in Kashmir are not only shielded by the Indian government but awarded honors and bonuses throughout their careers in counterinsurgency.

The scale and nature of the military violence in Kashmir against the civilian population meets the legal definition of crimes against humanity. Similar situations elsewhere have led to international criminal prosecutions of human rights abusers: international criminal tribunals on Yugoslavia and Rwanda, the Pinochet case, the establishment of the International Criminal Court in 2003, the increasing exercise of universal jurisdiction to bring war criminals and torturers to justice in domestic courts, the hybrid tribunals in Cambodia, and the experience of truth commissions in South Africa, Guatemala and Peru—all these contribute to the development of an idea of justice that could not be subverted by impunity and national sovereignty.

The principle of universal jurisdiction, which underlies many of these developments, recognizes that crimes such as war crimes and crimes against humanity are so heinous that the duty to prosecute those responsible belongs to the world as a whole, and jurisdiction may be exercised by any competent national court, regardless of the location where the crime was committed. The Pinochet case established a strong precedent for the exercise of universal jurisdiction by national courts. In 1998, when the former Chilean dictator was visiting the UK, the Spanish Judge Baltazar Garzon requested the British government to try him

for the crimes against humanity committed under his regime, and failing that, to extradite him to Spain to stand trial. The case went before the Law Lords (then the highest court in the UK) in 1999. They ruled that Pinochet could not claim immunity as a former head of state, and that he should indeed be extradited to Spain to stand trial. The ruling also accepted that the Spanish court could exercise jurisdiction for the crimes committed under his regime in Chile. While the case ended inconclusively with the British government allowing Pinochet to escape prosecution by helping him return to Chile, the process established the principle that competent national courts could exercise jurisdiction over crimes against humanity even if the crimes were committed in another country and there was no connection between either perpetrator or victim and the country exercising universal jurisdiction. The Law Lords also accepted the obligation of the UK to bring Pinochet to trial, and failing that, to extradite him to Spain where the courts were willing to exercise universal jurisdiction.

The International Criminal Court, with all its shortcomings, is based the principle of universal jurisdiction, even though it does not try crimes retroactively; that is, crimes committed before the constitution of the court in 2002. Criminal and civil prosecutions based on universal jurisdiction have been launched with success by groups like the Center for Justice and Accountability (CJA) and Center for Constitutional Rights (CCR) in the United States, and the European Center for Civil and Constitutional Rights (ECCHR) in Europe. A major step was taken in 2011 by the UN Human Rights Council, which created the mandate for a Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence to “deal with situations in which there have been gross violations of human rights and serious violations of international humanitarian law” in order to “ensure accountability, serve justice, provide remedies to victims, promote healing and reconciliation, establish independent oversight of the security system and restore confidence in the institutions of the State and promote the rule of law in accordance with international human rights law.”⁴

The evolving understanding of the scope and nature of transitional justice is outlined in the Special Rapporteur's 2014 report to the UN General Assembly. Particularly relevant to Kashmir are the emphases on fighting impunity and on international cooperation in prosecuting human rights violators: Special Rapporteur Pablo de Grieff emphasizes that "states have a duty to investigate and prosecute violations of human rights and humanitarian law which constitute crimes under national or international law. This duty flows from the right to an effective remedy, including the right to truth. Failure to investigate and prosecute such violations gives rise to a separate breach of human rights treaty law. . . . States have the duty to assist each other to bring to justice persons suspected of having committed crimes under domestic or international law. The Special Rapporteur is concerned at the recent regress in the area of universal jurisdiction, in which some 'pioneer countries' have opted to be more restrictive in their legislation regarding the extraterritorial jurisdiction over international crimes."⁵

While universal jurisdiction offers the best hope of overcoming the problem of impunity and the stone wall of national sovereignty, the shortcomings and limitations in its application have become apparent over time. The potential and abuse of the principles of universal jurisdiction were recently debated by the UN General Assembly. The debate makes it clear that like all human right instruments, it is open to manipulation and subservience to the political and strategic interests of powerful nations (An-Na'im 2013; Falk 2014; Kaleck 2015).⁶ A growing body of literature (Goodale and Clarke 2009; Hinton 2010; Roht-Arriaza 2013; Shaw, Waldorf, and Hazan 2010; Sikkink 2011; van der Merwe, Baxter, and Chapman 2009) addresses the experience of transitional justice in light of the experience of prosecution, criminal tribunals, truth commissions, reparations, etc. This experience throws up a range of theoretical and substantive issues—the form prosecutions should take, the possibilities and shortcomings in the processes of truth telling, the vexed issue of offering amnesty in exchange for truth telling, the appropriate composition of courts to try perpetrators of serious abuses, differing conceptions of justice in international law and local practices, and the attempts to balance justice and accountability with the need

for reconciliation in divided societies. The critiques of transitional justice range from the belief that it constitutes a “soft form” of justice to the hoary claim that it imposes alien standards of justice on divergent local situations. Seen from the perspective of the Kashmiri victims and families of victims of human rights abuses, the question of whether formal justice satisfies the needs of victims (Goodale and Clarke 2009) is one that cannot yet be answered. Kashmiris have not yet had the luxury of rejecting formal justice as the minimum form of restitution for the harms they have suffered. The problem in Kashmir is not the limitations of judicial mechanisms but their total absence.

As Special Rapporteur Pablo de Grieff notes, transitional justice mechanisms cannot be cherry picked but must form part of a comprehensive package of political change that above all guarantees non-recurrence of the violations. In Kashmir, mechanisms of justice and accountability must necessarily be part of an overall political settlement. The broad outlines of such a settlement are shared by many proposals over the decades (Baba 2014); their definition of the parameters of a peaceful settlement are discussed in the next chapter.

Kashmiri memory and aspirations for justice converge in remarkable fashion with the evolving principles of international justice. An essay by Sajid Iqbal and Zoheb Hossein examines the history of truth commissions, including international criminal tribunals, truth commissions, universal jurisdiction prosecutions, and memory projects, to find the practices and precedents most applicable to the situation in Kashmir (Iqbal and Hossein 2014). Building on this work, it is possible to identify local initiatives and institutions in Kashmir that could participate in the creation of mechanisms of justice, truth telling, and accountability. Manifestly, peace cannot be achieved in Kashmir without accounting for the long and continuing history of abuses.

Along with groups like the APDP, the State Human Rights Commission (SHRC) in Kashmir is a potential local actor in criminal prosecutions. The SHRC has had a checkered history since its creation in 1997. Initial efforts were stifled by lack of resources, funds, and personnel. More recently, the SHRC has

taken a leading role in reopening criminal investigations and prosecutions of the most infamous cases of abuse and atrocity, including the Gawkadal massacre and the Kunan-Poshpora mass rapes. Even as an officially constituted court, the SHRC faces an uphill, nearly impossible task in documenting these crimes and forcing the state government to act on in its findings and recommendations. Over the past five years, however, it has taken a proactive stance in the investigation and prosecution of crimes that have gone unpunished for twenty years and more.

As seen in the preceding chapters, efforts by the SHRC and local courts to obtain justice for victims and survivors are deliberately blocked by the state administration and police, the army, and the central government in New Delhi. The helplessness of the SHRC, the Kashmiri judiciary and civil administration vis-à-vis the military and the central government is a reflection of the anomalous position of Kashmir in relation to the Indian polity. The constitutional guarantees of autonomy have been honored only in the breach, in the denial of basic civil liberties and human rights. The facade of democracy presented by local government and elected representative bodies, which are in fact powerless, is nevertheless essential to the Indian claims that it is a democracy and that by voting in elections Kashmiris express their acceptance of Indian rule.

India ratified the International Covenant on Civil and Political Rights (ICCPR) in 1979. This makes protection of the rights guaranteed therein binding on the Indian government and obliges it to amend domestic law to bring it into conformity with international standards. This has never been done. Indian police and criminal codes, derived from colonial laws, remain tied to a model of authoritarian rule rather than one dedicated to upholding the rights and freedoms of citizens. India has likewise been in default of its obligations under the ICCPR, which “sets out the obligation of states to respect and ensure to all individuals within their territory and subject to their jurisdiction all rights set out in the ICCPR. These include: the right to life (prohibition on extrajudicial killing), the prohibition of torture and arbitrary detention without discrimination of any kind, and the provision of

remedies to victims of human rights violations” (Human Rights Law Network 2009, 13). As seen earlier, the right to life (Article 6 of the ICCPR) and the prohibition of torture (Article 7) have the status of *jus cogens*, peremptory law from which no derogation is possible. “Article 4 of the ICCPR specifically states that these rights cannot be waived—‘even in times of public emergency threatening the life of the nation’” (Human Rights Law Network 2009, 14).

The cases discussed above reveal a range of strategies that obstruct or deny justice. A recent report titled *Alleged Perpetrators: Stories of Impunity in J&K* identifies senior army and police officers accused of crimes for which they have not been held accountable.⁷ It concludes that the failure of justice is both systemic and deliberate: “That failure to deliver justice is actually its success. . . . That’s what it’s meant to do; it’s meant to fail.”⁸ In a review article on the dimensions of impunity and the proposals to incorporate it into a new police bill, Warisha Farasat (2013) pinpoints the central problem: a state that consistently provides legal immunity to its military personnel, and aspires to the same for its police, cannot be relied on to provide justice for victims of human rights violations committed by those forces. This brings the central problem in the enforcement of international human rights into focus through a Kashmiri lens. It was precisely this problem that led to the development of international criminal prosecutions, a solution that must now be brought to Kashmir. Initiatives by local human rights groups such as APDP, official bodies such as SHRC, and visits by the UN Special Rapporteurs provide a basis on which to build a structure of international criminal investigations and prosecutions.

India is not a signatory to the ICC and has signed a bilateral immunity agreement with the United States, by which both countries agree not to hand over each other’s citizens to the Court for prosecution for war crimes or crimes against humanity. The principles of universal jurisdiction and international justice are haltingly being applied to conflicts in South Asia. The UN has maintained an active interest in the situation in Sri Lanka, creating a special investigation into war crimes and continuing to hold the Sri Lankan government accountable. A Nepalese military

officer is facing prosecution in British courts for abuses committed during anti-Maoist counterinsurgency operations. An end to Indian exceptionalism and an accounting for the crimes of 24 years of military rule are essential conditions for a peaceful, negotiated settlement of the Kashmir conflict.

The Meanings of Justice

Zindagi ko kareeb se dekho, is ka chehra tumhey roola dega.
(Look closely at life. Its face will make you weep.)

—Sudarshan Faqir

I know you're tired but come, this is the way.

—Rumi

Huma Sheikh is the daughter of Ghulam Nabi Sheikh, the famous Kashmiri singer and composer. She is a writer and will one day tell her own story. For now, it is scattered in legal depositions, blog posts, online memoirs, and news reports. Her father helped to revitalize the world of Kashmiri music and culture after the devastation of the 1990s. He founded a school to provide free education to talented young musicians. His golden voice earned him the title of the “Mehdi Hassan of Kashmir,” and the status of a legend within his own lifetime. In 2003, he was murdered by the Punjab police while traveling by train—the Shalimar Express—from Jammu to Delhi.

In 2009, Huma wrote: “But the voice is silent now. Today is the sixth anniversary of my father’s death, which is still a mystery. My father was killed in 2003. He disappeared mysteriously from the train bound for Delhi from Jammu on the night of 13 July and was reported dead the following day by Punjab police. They claimed his body had been cremated. We only got his clothes and slippers and the ring and watch he was wearing. The tragedy of his death has stuck with us and the ghosts of mystery haunt us as time passes. We have many questions but no answers. Dad’s death is a mystery and his killing didn’t linger with our Valley’s people, though he was renowned in Jammu and Kashmir.”⁹

Huma had just graduated from college and was starting a prestigious new course in communications at an institute in Delhi. This was to be her first time living away from home, and her father traveled with her to help her settle in a new environment. While the journey from Srinagar to Jammu by car was like a long picnic, in Jammu, everything changed. That evening seemed to be doomed. She recalls that her father was behaving in a very uncharacteristic manner, in a great hurry to get to the railway station:

As we reached his house, we had some time to settle down and take little rest after the day's road voyage, but dad's friends and me alike were amazed to see daddy in such an unbelievable hurry. . . . He insisted on leaving for the station long before the departure and all of us had eventually our dinner packed for us to have it on the train. . . . he was never late or arrived before time at work or otherwise. Very punctual. That day, however, we had about two hours before the train finally scrambled at 9.30 in the night.

On board the train, too, his mood was serious. Neither of them knew it, but the words he spoke then were his final farewell to her:

During those few hours until our dinner at 11 pm—which turned out to be my father's final moments with me—I found in him a completely different person. He was never so philosophical, never so good as a preacher and never so very concerned about me. He made me sit up on the berth to talk with him; though I was a little reluctant and drowsiness had taken a toll me as if in an indication of an impending grief ahead of the tragedy.

"Look Huma, you have to be brave to confront adversities courageously and lend your voice to curiosity by voicing your concerns. Since you will be studying alone in Delhi, you have to be strong and bold. All the rest follows," he said. I wondered what prompted dad to start his "preaching speech" at such an odd hour although I had similar sessions from him earlier as well. But the sullenness in his voice made it all the more different for me and it gave an impression that we would be apart forever, as if he was going far away never to come back again. He was in no mood to wind up his talk: "You must take a cue from your father—I

was only 16 years old when I ventured on an inter-state trip on my own, without my family's support, unlike you. Also in life, we should face adverse situations bravely as they are part of our lives."

My father said that as I was also going to be in the media now (dad was working in All India Radio), I must learn to explore answers about various things that intrigued me. "One should always keep one's mind open to know about different things." He said: "You can transform weakness into triumph on the anvil of sheer will power in your professional and personal life." The session happened to be my last conversation with dad. At dinner, which we had a little while ago, he spoon-fed me as one would deal with a toddler. And then all three of us drifted off to sleep. Dad bade me good night. That was the last time I saw him.

When I got up again in the night, my father had disappeared. He didn't even come again not even for his last rituals, which were performed in absentia. Neither police nor any judiciary found him ever. But his last speech has a lasting influence on me. So much so that every time I think of it, I feel I am born anew. "It is not only a rebirth but also a transformation, as I have become an entirely different human being now," I would think. His last words have helped me strengthen the confidence of my family and me alike to move ahead in life courageously.¹⁰

She would need all the courage he had sought to impart on that last day. When she awoke the next morning, there was no sign of her father. He seemed to have disappeared in the middle of the night. Huma and the family friend traveling with them searched the entire train and questioned all passengers and staff to no avail. Among the staff were railway policemen she recognized. Traveling on the same train a few months earlier, her father had been involved in an altercation with the railway police, which had turned ugly as they abused him for being a Kashmiri and threatened him with serious harm. His appearance, clothes, and accent clearly marked him as Kashmiri and thus fair game for nationalist bullying and violence. Huma had been with her father on the earlier journey and recognized the policemen on the morning she and her father's friend searched for her missing father.

On arrival in Delhi, the family friend contacted an acquaintance in the police and found that the Greater Reserve Police

Force (GRPF) had reported an “accident” on the line near Mukerian, and a badly mutilated body found near the tracks. The body was at the police station at Mukerian. The family friend retraced the journey of the day before, this time by car. On his arrival at the police station, only a two or three hours after the police reported finding the body, he discovered that it had already been cremated.¹¹ Cremation is contrary to Muslim practice, where the dead are buried. The body was also the subject of a violent death and a missing person investigation. The hasty cremation was also contrary to police procedures and thus highly suspicious. The family were given only a photograph of Ghulam Nabi Sheikh, badly injured and lying in a pool of blood, and the clothes he had worn on the last day of life.

Because he had been a well-known and widely admired figure, the manner of his killing and cremation caused a controversy that resulted in a CBI inquiry. The CBI report offered enough evidence for a criminal case to be opened in the Patiala High Court against the policemen on duty. However, in 2007, the CBI abruptly closed the case without informing the family.

Eight years later, Huma and her siblings are trying to reopen the case. The accused killers, as policemen, do not have legal immunity from prosecution. She recounts the long bitter struggle the family faced. Major politicians and cultural figures in Delhi and Srinagar were admirers and friends of Ghulam Nabi Sheikh, but all turned away when the family needed help. They were not a political family, and sought only justice. In the end, Huma's mother made the decision to move her family to Delhi to protect them from the negative backlash to their stand for justice in Kashmir. The whole time in Delhi, Huma, like all Kashmiris, lived with the tag of Kashmiri as terrorist. She was, she says, unable to be herself, to express herself. She withdrew into her shell, presenting an outward facade Indian society would accept. She characterizes her mental condition at that time as severely depressed. It was not until she came to the United States to continue her studies that she was at last able to breathe, confront her trauma, write, and take steps toward justice.

This narration is inadequate to convey the trauma and courage of this story. Equally incomprehensible is the silence and

indifference of the world in the face of Kashmiri suffering. Kashmir constitutes a test case for the professed universalism of the international human rights system. If the principles of universal human rights and justice are to have any meaning, when Huma finally tells her story, the world will have to listen, and act.

“Love is Strong as Death”

“Kashmir is that country which can never be conquered by force but only by the power of love.”

—Kalhana, *Rajatarangini* (*The River [Chronicle] of Kings*), c. 12th century CE

The paradoxes of sovereignty-without-legitimacy are endless and self-perpetuating. The execution of Afzal Guru in February 2013 produced another upsurge of protest in Kashmir, violently repressed. Jim Drummond writes: “When India executed Afzal Guru without even letting him exhaust all his appellate remedies, to feed the putative public cry for vengeance, it taught J&K that, as to their citizens, there could be no reliance on the rule of law or fair play” (2014, 48). The protests now reach Delhi, with small groups of students, academics, human rights advocates carrying reminders of a quarter century of violence and injustice. The rallies are attacked and abused by police and right-wing Hindu nationalist counter-demonstrators, but they persist. In May 2013, families of the APDP travelled with a group of 150 Kashmiris to protest in Delhi. They demanded that the body of Afzal Guru be released to his family for burial in Kashmir, and an end to military violence in Kashmir.

They were not allowed to protest at Jantar Mantar, a historic site located near the Parliament building in the Indian capital, where political protests are typically directed by police. Scores of police personnel assaulted the protesters, who including women and children, beating them and dragging them into the waiting vans. They were arrested and held for hours at the police station

before being released. The leaders of the protest were detained and tortured, then “deported” back to Kashmir, which India claims as its “inalienable part” (*atoot ang*). A planned press conference the next day was canceled under government pressure by the Press Club of India on the grounds that it was “anti-national.” The protestors then attempted to demonstrate the next day in the neighborhood where they were staying and found themselves in a confrontation with the Delhi Police, the Delhi Police Special Cell, the “anti-terrorism” unit notorious for its record of torture and extrajudicial killing, and paramilitary troops from the Central Industrial Security Force (CISF).¹

Press reports captured the spirit of the stand-off: “Police stopped them at Jamia Nagar, however, the protestors who were carrying placards and banners continued their protest. Amid pro-freedom slogans arguments continued for hours between the protestors and police. ‘Kashmiri prisoners are political prisoners and not terrorists’, ‘Release our sons and brothers’, ‘We want freedom’ were some of the slogans that were written on placards and banners. Human Rights activist, S. A. R. Geelani who was part of the protest, said that scores of Kashmiri men and women participated in the protest. He said those who participated in protest included Parveena Ahangar and mother and brother of Maqbool Bhat. Several eminent personalities reached there to show solidarity with the protestors and they included Prof. Zafarul Islam Khan, Editor Milli Gazette, Varvara Rao, President Revolutionary Democratic Front, Ganpati Prasad Secretary RDF, Prof. S. N. Saibaba and Prof Hani Baba of Delhi University, Rona Wilson of Committee for Release of Political Prisoners besides college students.”²

Even in the heart of the empire, the tales of sorrow and courage subvert the regime of terror and silence. Truth and the moral courage of the survivors are indeed the greatest threat to the occupation. Parveena described her experience of the protest in an interview: “I was there along with 10 other members of APDP. The whole day we protested there under scorching sun. Even the policewomen, who were present there wept when they heard our agonizing stories.”³

Map as Prison

Despite repeated Indian claims over the years that Kashmir is its "inalienable" part, the United Nations continues to recognize Kashmir as a disputed territory and maintains military observers along both sides of the Line of Control.⁴ While UN Security Council resolutions calling for a plebiscite to resolve the status of Kashmir remain applicable, and perhaps the only reasonable way of resolving the conflict, Kashmiris calling for such a solution are routinely treated as "aboveground" terrorists and jailed for years without trial.

In a recent article listing the parameters of a peaceful solution to the Kashmir conflict, political scientist Dr. Noor Ahmed Baba recalls Kashmir's history as a zone of cultural contact and trade, connected to surrounding regions, Central Asia, Iran, and China. This role was lost in 1947, when the borders and territorial claims of the new states turned contact zones like Kashmir and the northeast into isolated peripheries, and eventually into conflict zones: "Kashmir was pushed into geopolitical seclusion in 1947. The division of the subcontinent, the *de facto* division of Jammu and Kashmir and the placement of its two parts under the actual control of two different and hostile states, and the resultant hardening of borders, pushed the Valley of Kashmir and its surrounding regions into a number of social, psychological, political and economic disadvantages. These developments not only separated different parts of the State in different countries, but different regions within the State, and even regions on each side of the Line of Control (LoC) were cut off from one another. 1947 pushed Kashmir from centre to isolated periphery. Almost all its major connecting points were blocked and Kashmir became dependent on a highway that had never been considered reliable in comparison to the roads that historically connected it with the rest of the world. This seclusion had psychological and economic implications for the people of Kashmir; even families were divided on either side of the LoC. In 1947, the countries of the region were erecting borders in terms of the prevalent hatred. Then, we were conditioned by the notion of aggressive

nationalism and hard borders defining national interest. Today, interdependence and softer borders are defining advantages for countries. Movement in this direction would reconnect the sub-continent to the silk route and, through that, to East, Central and West Asia and Europe by land” (Baba 2014, 69).

Novelist/economist Nitasha Kaul (2010) places this in the context of the larger region where premodern and precolonial culture zones were carved up into national territories: “The story of the mountain-peoples of Eurasia is, by and large, a tragedy. Run your index finger on the multi-coloured land surface of a modern day political world map, and you will see how many ‘problem areas’ (some states, some sub-state entities, some overlapping zones of displaced peoples)—Tibet, Kashmir, North Pakistan, Afghanistan, Kyrgyzstan, Uzbekistan, Iran, Iraq, Syria—were thriving zones of contact between diverse communities that traded goods and exchanged ideas along the arteries of the ‘Silk Route’. Like many of these other places, Kashmir, a Himalayan zone of contact between diverse peoples in history, has become a zone of conflict, due in large measure to modern boundary-making processes which evolved to accommodate economic privileges and political trade-offs with rivals that were necessary for European (especially British) colonisation of the region.”

A workable peace settlement has to recognize this history and follow its logic. A number of solutions have been proposed over the decades since the UN abandoned its efforts in 1951, following Owen Dixon’s unsuccessful mission to broker a solution. The elements of a just peace include: demilitarization and free movement across the LoC, with the goal of eventual reunification; the release of all political prisoners; an end to all repressive laws that limit freedom of speech, expression and association; accountability and justice for human rights abuses through mechanisms such as an international criminal tribunal; and the creation within a specifically defined time-frame of a political mechanism such as the plebiscite mandated by UN Security Council resolutions to enable the people of Kashmir to determine their own future. To these proposals, Dr. Baba (2014) adds the guiding principle, born out of the uniquely Kashmiri ethos, of turning

Kashmir from a conflict zone into a zone of peace between India and Pakistan: "We need to work for conditions which make the discourse of violence completely irrelevant so that Kashmir as a zone of peace assumes the status of Asia's Switzerland in a political sense as well" (2014, 76).

While these elements are not difficult to list, their implementation requires international mediation, support and supervision. Parallels and precedents abound in recent years: East Timor, Kosovo, Scotland. The problem is not the lack of feasible solutions but the inability of India and Pakistan to achieve a solution bilaterally and the unwillingness of the UN and the international community to step in to mediate a peaceful solution. Since the rejection of the Dixon plan by both India and Pakistan in 1950, the UN and the international community have taken a hands-off approach and bear their share of the blame for the perpetuation of the conflict.

Lessons from a Flood

As this book went to press in spring 2015, heavy spring rains brought a renewed threat of flooding and landslides in Kashmir, leading to a replay of the scenes from the catastrophic flooding in September 2014. Once again, the repressive state and military apparatus faded away and Kashmiris were left to fend for themselves without any resources or funds. Once again Kashmiri society pulled together for rescue and rehabilitation efforts. Fortunately the spring floods didn't repeat the devastation of September 2014, but every spell of heavy rain leads to loss of life and property, evidence of the environmental devastation that is an additional and lasting legacy of the occupation. While the environmental consequences of military rule only become apparent in times of crisis like the earthquake of 2005, the expansion and militarization of the pilgrimage to Amarnath (Navlakha 2008) and the deadly floods of September 2014, these bring into sharp focus the consequences when government functions are concentrated, in classic colonial fashion, solely on repression and extraction

In September 2014, the Jhelum River overflowed its banks, bringing unprecedented flooding and devastation to Srinagar and across the valley. The ubiquitous military presence melted away. Suddenly, there were no uniforms or weapons in sight. It was the heroism and courage of ordinary Kashmiris that held center stage—using makeshift and leaky boats to rescue those trapped by the swift rising waters, organizing emergency supplies, laying the foundations for rehabilitation and rebuilding efforts.⁵ Inevitably, once the crisis was over, the routines of occupation—censorship, violence against the civilian population, corruption and extortion—returned in full force. But the floods revealed many important truths, whose significance will unfold in coming days and even years, as will their implications for a peaceful resolution of the conflict.

First, that governance under military occupation is not only ineffective and focused on repression, but colossally dangerous in an age of natural disasters linked to climate change. The flood was largely a manmade one. Early warnings specifically addressed to the government were ignored, measures to safely divert the rising waters were not taken, the heavily silted river was not dredged. And behind this lies a history of environmental degradation heavily accelerated by the complicity of a military machine that exercises absolute control over a resource rich and environmentally fragile territory. The collusion of the army with timber smugglers has long been the subject of muted criticism in the press, environmentalist and even government circles. Its devastating outcomes can be seen in large scale deforestation and the consequent silting of rivers which flood when they can no longer hold the water added by heavy rains.

Freed of the heavy hand of military and police domination, Kashmiri society proved to be resourceful, courageous and compassionate. A staple Indian pretext for dismissing the Kashmiri right to self-determination is the claim that Kashmiris are unable to govern themselves—the classic colonial argument now deployed in favor of the imperial nation-state (cf. Kaul 2015). The differential responses to the floods show the opposite to be true and offer an almost textbook illustration of the two opposing forms of power and sovereignty. The Indian claim to sovereignty-without-accountability is opposed by a Kashmiri version of the

social contract, of social support and resilience despite almost insurmountable odds.

Repeating its callous response to the massive earthquake of 2005 which resulted in heavy loss of life and widespread destruction on both sides on the LoC, the Indian government compounded its own lack of flood relief efforts by banning all foreign aid, including from the United Nations. While the refusal to accept foreign aid for Kashmiri victims of natural disasters was couched in terms of Indian self-sufficiency and pride, these considerations do not apply to natural disasters in India. In the aftermath of the tsunami of 2004, cyclones in southern and eastern India, flooding in the Himalayan region of Uttarakhand in 2013, foreign assistance was not only allowed but welcomed.⁶

The Kashmiri rescue and relief efforts also put to rest once and for all the unfounded accusations of religious extremism, which India has used to justify its horrific record of abuses in Kashmir. Indian media and official discourse alike have peddled images of Kashmiris as "Islamic fanatics" and terrorist sympathizers, drawn from the crudest of Islamophobic ravings. But in rescue and relief work, Kashmiris did not discriminate. Tearful testimonies from stranded Indian tourists, Hindu priests⁷ and Sikh community members showed the workings of the humane and tolerant traditions which Kashmiris have not abandoned under the harshest duress.

The floods left hundreds dead and 1.5 million displaced. Any rehabilitation and rebuilding has been done by Kashmiris on their own initiative, with the media leading the way. There has been no disaster relief forthcoming from the Indian government, again unlike situations in India. But by the end of September, the military occupation was back in business. On the festival of Eid, worshippers in the mosques were teargassed; protests against the slow pace of government relief and rehabilitation work were beaten and dispersed; *Greater Kashmir*, the valley's leading English language newspaper was being sued for "defamation" by the government for daring to publish an accurate analysis of the official missteps that led to the floods.⁸

It is perhaps the central paradox of sovereignty without legitimacy that every Indian action in relation to Kashmir, intended

to assert its “inalienability,” only serves to highlight its separate and distinct status. The floods of 2014 were a turning point in demonstrating the contrast between Kashmiri and Indian governance, manifested in their essential forms in times of crisis. Likewise, the environmental crisis represented by the Amarnath pilgrimage led in 2008 to the resurgence of mass mobilization for Kashmiri independence and against Indian rule. The Hindu pilgrimage to the cave shrine of Amarnath has been managed and protected by Kashmiri Muslims since its inception in the 1830s. The route to the shrine passes through a spectacular and fragile mountain environment, along the banks of the Lidder River. Since the late 1990s, the pilgrimage route has been increasingly dominated by the army and militant Hindu nationalists buoyed by their participation in periodic pogroms against Muslims and Christians in India and the electoral benefits thereof. Heedless of the environmental consequences, the pilgrimage has been expanded, with the number of pilgrims permitted each year increasing “. . . from 12,000 in 1989 to over 4,00,000 in 2007 and extending the period of the pilgrimage from 15 days to two and half months” (Navlakha 2008). Trash, human waste and plastic bags have choked the river and made the water unfit for use and consumption. By way of comparison, the number of pilgrims to Gangotri, the source of the Ganges and a major Hindu pilgrimage in the central Himalaya, has been limited to 150 a day to avoid burdening the environment. The contrast with Kashmir is both striking and instructive.

In 2008, the Indian government attempted to transfer control of the entire Amarnath pilgrimage route to a “shrine board” packed with Hindu nationalist sympathizers, in violation of Article 370 of the Indian Constitution which is supposed to guarantee the autonomy of Kashmir. A keystone of this autonomy is the prohibition of the sale or transfer of land to outsiders. This decision led to massive protests in the Kashmir Valley, in a return to the popular mobilization of the 1990s. The Indian response too repeated the pattern of the forgotten massacres, with army and paramilitaries opening fire on unarmed protestors. As a civilian counterpart to the military violence, Hindu nationalist groups in Jammu blockaded the national highway which is the

only connection between the Kashmir Valley and India. This is the only route along which the necessities of life—food, fuel, medicines—reach the Kashmir Valley since the closing of all historic routes westward to Muzaffrabad in Azad Kashmir in 1947. Within a week this informal blockade resulted in serious shortages of essential supplies in the valley, particularly of life saving drugs. The Kashmiri protests persisted, and led to a reversal of the decision to transfer the land. The protests against the land transfer also set the stage for a return to mass mobilization in support of Kashmiri independence, peaking in the rising of 2010 (Mathur 2012a).

The competing claims to sovereignty represented by Indian control and the Kashmiri struggle are paralleled in political and legal theory. On the one hand is Carl Schmitt's absolute and authoritative definition, deriving from Bodin's theory of absolutism (Roark 2013): "The sovereign is the exception." It has largely been adopted, by way of Benjamin's observation that the exception has become the norm, by contemporary theorists, following Agamben. While it seems to offer a powerful critique of the post-Cold War dispensation, it is betrayed by its origins in the work of a Nazi sympathizer into ceding all ground of legitimacy to untrammelled power, arguing by implication that there is nothing else, and no possible politics of hope or resistance. This theoretical denial of politics (for a critique of Agamben's notion, or lack thereof, of agency, Nedoh 2011, Prozorov 2014) may itself be the greatest victory for the votaries of absolute power, accepting its absolute claims over life and death, which range beyond the wildest imaginings of the divine right of rulers.

Agamben invokes Foucault's "decisive abandonment of the traditional approach to the problem of power, which is based on juridico-institutional models (the definition of sovereignty, the theory of the State), in favor of an unprejudiced analysis of the concrete ways in which power penetrates subjects' very bodies and forms of life." While offering rich insight into the technologies of domination, it leaves the landscapes of power, domination and resistance devoid of actors and institutions, and thereby of any hope or possibility of change. Yet in legal and constitutional theory, legitimate power, or authority, is legitimate only when it

is limited and accountable. In Dicey's (1959) classic definition, legitimate power or authority, sovereign power, is finite, bounded by laws, and accountable. The rule of law is defined in jurisprudence through concepts such as the limits to arbitrary power, protection of fundamental rights, and equal justice applicable to all (Bingham 2011). The defining feature of sovereignty is thus not unbounded power but power that binds and limits those that wield it.

The Indian claim to Kashmir, defying the logic of history, geography and political principles, based only on massive military force, may be seen as an epochal failure of the postcolonial imagination. As a vanguard of Indian writers have argued (Anand 2012, Nitasha Kaul 2010, Suvir Kaul 2015, Visweswaran 2012), the newly independent nation assumed the role of regional empire as its birthright, with all the injustice and violence entailed in the imperial project. It may well be Kashmir's destiny to lead the way to a reimagining of the map of the subcontinent that will finally free the peoples of the borderlands to pursue their own destinies.

A Bloodied Shroud

This section title sums up what seems to be the legacy of Indian rule in Kashmir. Lest it seem too dramatic, it is worthwhile to recount the incident it recalls. One of the teenagers killed by Indian paramilitaries in the rising of 2010 was Muzaffar Ahmad Bhat, son of Bashir Ahmad Bhat, of Gangbuh, Tenggpora, aged 17. He was a student at the PUC college. On 5 July he was playing football in the meadow near his home with two other boys when they saw a Central Reserve Police Force (CRPF) patrol stop on the road atop the nearby embankment. The two younger boys were able to run away, but saw Muzaffar surrounded by CRPF troops and beaten unconscious with rifle butts, then his body dragged into a blue police van. The boys carried the news to his home, whence his family and neighbors rushed to the local police station to secure his release. The police insisted that they did not know of his whereabouts and hinted that he may have fallen into the river, known as the Gangbuh Nallah. The family was joined by people from the neighboring areas; soon there was

a crowd of 5000 to 6000 outside the police station and blocking the highway. They sat there all night; they could see the blue van driving around, seeking a way past the crowd. Around 5:00 a.m. the police began firing tear gas, bullets—to disperse the crowd. Under cover of the firing, they dumped Muzaffar's body in the river; it was discovered soon after. Friends who were present testified that there was fresh blood pouring from his nostrils as his body was removed from the river. The postmortem report confirmed that death was not due to drowning but severe head injuries and blunt trauma. The family believes that the police and CRPF had kept him, unconscious, in the van all night, waiting for an opportunity to dump his body in the river. The firing in the morning provided the cover to do this. Nor was the funeral the next day allowed to proceed in peace. The funeral prayers, *namaz-e-janaza*, for Muzaffar and another person who was killed in firing the previous day, were read in the football field in the meadow by the river where he had played with his friends. As the bodies were carried to the cemetery, CRPF opened fire on the procession, forcing mourners and pall-bearers to scatter. They beat and kicked the mourners and the bodies; Muzaffar's uncle, who tried to shield his nephew's body with his own, was ruthlessly beaten. Blood pouring from his head stained the shroud. The entire incident was recorded by a group of Kashmiri photo-journalists, who were themselves attacked by the CRPF. Twelve journalists were injured, two with serious injuries that required hospitalization.⁹

Epilogue/Memorial: Eid, August 8, 2013

One of the most difficult scenes to decipher in Sanjay Kak's path-breaking film on Kashmir, *Jashn-e-Azadi* (How We Celebrate Freedom), is the aftermath of an encounter—understood as an extrajudicial killing staged as a shootout between the army and militants—in downtown Srinagar. The film, released in 2007, was perhaps the first successful effort to breach the wall of silence created by Indian civil society on army rule in Kashmir. In that street scene, a stream of blood runs between the military vehicles and the soldiers' boots, gathering in puddles of rich, deep red.

An Indian soldier, with his head bent in utter concentration, tries to sweep away the blood using a completely inadequate short-handled broom. He has no hope of succeeding. The film makes no commentary.

On Eid, 8 August 2013, a Facebook page carries this note: “Fida Nabi, 17, was injured when CRPF personnel opened fire on a funeral procession in HMT Srinagar on August 3, 2010. He was rushed to SKIMS for treatment where he breathed his last after 5 days on 8 August. ‘He had stepped out of his home to see what was happening on outside. As soon as he went outside, a bullet hit his cheek, injuring him critically’, his brother, Abid Nabi, a photojournalist, recalls.”

Notes

Chapter 1

1. For instance: “437 Persons Killed, 2048 Tortured, 6888 Forced to Labour in North Kashmir’s 50 Villages: CCJ Report,” *The Kashmir Walla*, October 4, 2012, <http://www.thekashmirwalla.com/2012/10/437-person-killed-2048-tortured-6888-persons-forced-to-labour-in-north-kashmirs-50-villages-ccj-report/#.VMz48oY8KrU> (accessed January 31, 2015).
2. <http://kashmirfilm.wordpress.com/keywords/#i>
3. This is discussed in greater detail in Chapter 9.
4. Ali 1997: 16–17.
5. For example, reports in Kashmiri newspapers: “Vacate School Buildings” in *Greater Kashmir*, May 13, 2004. “In Kashmir Old Torture Centers Get Makeover” *The Christian Science Monitor*, July 11, 2012, <http://www.kashmirglobal.com/2012/07/12/in-kashmir-old-torture-centers-get-makeover.html> (accessed June 17, 2015); “The Meadow of Death in Kashmir: Tosa Maidan” by Sajad Rasool in *The Vox Kashmir*, November 1, 2012, <http://www.thevoxkashmir.com/2012/11/01/death-meadow-of-kashmir-tosa-maidan/> (accessed January 2, 2015); also *Curfewed Night*, Basharat Peer’s 2008 memoir of the conflict.
6. United Nations Universal Declaration of Human Rights, <http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng> (accessed June 17, 2015).
7. Also “Cruel Dogra Maharajas’ Legacy: Forced Labour in Ajas,” *Greater Kashmir News Service*, May 13, 2004.
8. While Kashmiri writers, academics, journalists, students, and political activists have lived under the heel of censorship since 1947, the sudden efflorescence of writing and reporting on Kashmir has produced a new wave of repression that now also targets Indian and foreign writers and reporters. In 2010, anthropologists Angana Chatterji and Richard Shapiro were barred from entering India in retaliation for their reporting on the discovery of mass graves in Kashmir. They were subsequently fired from their academic positions at a

- university in the United States, following complaints from students of Indian origin (<http://www.versobooks.com/blogs/744-kashmir-author-suspended-from-california-institute-of-integral-studies>). Likewise, American radio host David Barsamian was denied entry into India (<http://www.sacw.net/article2302.html>). Indian civil liberties activist Gautam Navlakha was “deported” from Srinagar airport. (<http://www.theguardian.com/commentisfree/libertycentral/2011/sep/30/kashmir-india-unmarked-graves>). Writers Arundhati Roy and Shuddabrata Sengupta have being charged with sedition for speaking on Kashmir. A talk by historian Mridu Rai in Srinagar was shut down by police on the grounds that it constituted “a threat to public order.” The talk, titled “Languages of Violence, Languages of Justice: the State and Insurgent Kashmir,” was delivered at a private venue. (<http://www.kashmirtimes.in/newsdet.aspx?q=34374> and <http://www.kashmirobserver.net/news/top-news/police-foil-mridu-rais-kashmir-talk>).
9. Cited in Lassiter 2005.
 10. Among the many critiques of the anthropological notion of self-contained “cultures” that could be studied in their entirety by focusing on a bounded location, Paul Stoller’s (2002) rethinking of precolonial Africa explores the long-distance and long-term economic, political, social, and cultural connections that spanned not only the continent but also connected it to the Middle East and Asia. Engseng Ho’s (2006) work on the trading and religious families of the Yemeni Hadhramawt likewise traces the intricate connections that bound families across three continents and over five centuries. Such connections were forcibly broken and remade in the process of colonial conquest and consolidation. Anthropological knowledge merely replicated and projected on the past the colonial paradigm of insulated cultures at war with each other, maintaining an uneasy peace only under the iron hand of the conqueror.
 11. Charles Huckabee, “Boston College Offers to Return Belfast Project Tapes to Interviewees,” *The Chronicle of Higher Education*, May 7, 2014: <http://chronicle.com/blogs/ticker/boston-college-offers-tYo-return-belfast-project-tapes-to-interviewees/77199>
 12. American Anthropological Association Code of Ethics at <http://ethics.aaanet.org/category/statement/>) and guidelines recommended by the International Committee of the Red Cross (ICRC) for reporting on torture and other state crimes. https://www.essex.ac.uk/reportingkillingshandbook/handbook/part_i_2.htm#2_3_2

13. "In Kashmir Old Torture Centers Get Makeover," *The Christian Science Monitor*, July 11, 2012: <http://www.kashmirglobal.com/2012/07/12/in-kashmir-old-torture-centers-get-makeover.html>
14. Sajad Rasool, "The Meadow of Death in Kashmir: Tosa Maidan," *The Vox Kashmir*, November 1, 2012, <http://www.thevoxxkashmir.com/2012/11/01/death-meadow-of-kashmir-tosa-maidan/> (accessed January 31, 2015).

Chapter 2

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